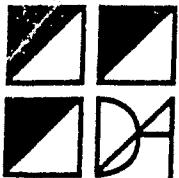
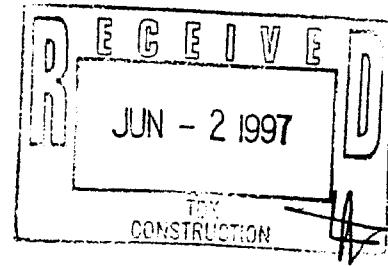


# **EXHIBIT**

# **2**



DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
 161 Delaware Avenue, Delmar, New York 12054-1398  
 (518) 475-3000  
 Fax: (518) 475-3040



May 29, 1997

Mr. Logan Hurst, Treasurer  
 TDX Construction Corporation  
 121 West 27<sup>th</sup> Street  
 New York, NY 10001

Dear Mr. Hurst

Enclosed is one executed copy of the following Agreement:

Institution:	<b>BARUCH COLLEGE</b>
Facility:	Site "B"
Agreement:	\$5,932,250.00
Agreement No:	6500 1802 5156
Explanation:	Construction Manager Services Construction Phase

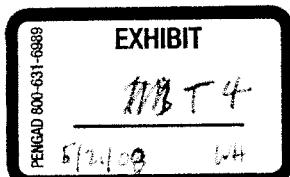
Sincerely,

*Brian Dollard*

Brian Dollard  
 Contracts and Cost Control Unit

Enclosures

cc: L. Gartner, CUNY  
 N. D'Ambrosio, DASNY  
 NYCO File  
 File



Thomas J. Murphy, Chairman  
 John L. Buono, Executive Director

New York Office  
 One Penn Plaza, 52nd Floor  
 New York, New York 10119-0098  
 (212) 273-5000 Fax: (212) 273-5121

Buffalo Office  
 539 Franklin Street  
 Buffalo, New York 14202-1109  
 (716) 884-9780 Fax: (716) 884-9787

04.24.97

**CONSTRUCTION PHASE**

**BARUCH COLLEGE**  
**Site "B"**  
**DA#6500 1802 5156**

**AGREEMENT**

An Agreement is hereby made by and between the DORMITORY AUTHORITY - State of New York, having its principal office and place of business as 161 Delaware Avenue, Delmar, New York 12054-1398, hereinafter referred to as the OWNER, and TDX CONSTRUCTION CORPORATION, whose office is located at 121 West 27<sup>th</sup> Street, New York, New York 10001, hereinafter referred to as the CONSTRUCTION MANAGER; and

WHEREAS, the OWNER intends to construct a new Administrative and Academic building at Baruch College - Site "B", hereinafter referred to as the Project; and

WHEREAS, the CONSTRUCTION MANAGER has provided Design Consulting Services during the Design Phase of the Project; and

WHEREAS, the OWNER now desires the CONSTRUCTION MANAGER to provide Construction Management Services for the Construction Phase of the Project, including the administration of the General Conditions Work;

NOW, THEREFORE, the OWNER and the CONSTRUCTION MANAGER hereby mutually covenant and agree as follows:

**ARTICLE I: SCOPE OF SERVICES**

The CONSTRUCTION MANAGER's Services shall include, but not be limited to, all Articles of this Agreement and all Services enumerated in Appendix "A", entitled **SCOPE OF SERVICES**, (hereinafter the Work), which is attached to and made a part hereof.

**ARTICLE II: ADDITIONAL SERVICES**

The OWNER reserves the right to direct the CONSTRUCTION MANAGER to provide Additional Services and the CONSTRUCTION MANAGER shall provide said Additional Services when so directed.

**ARTICLE III: EXTRA WORK**

If the CONSTRUCTION MANAGER believes that any work it has been directed to perform is beyond the scope of this Agreement and constitutes Extra Work, it shall promptly so notify the OWNER in writing. The OWNER shall determine whether or not the work is in fact beyond the scope of this Agreement and is Extra Work. If the OWNER determines that the work is Extra Work, this Agreement shall be modified to equitably reflect the cost of said Extra Work.

**ARTICLE IV: CONSULTANTS**

The OWNER may retain a Consultant or Consultants to furnish Services throughout the term of this Agreement, and the CONSTRUCTION MANAGER shall cooperate with said Consultant or Consultants.

**ARTICLE V: PROVISION FOR PAYMENT**

A. Construction Phase - Including Supervision and Administration of General Conditions Work

For satisfactory performance of all Construction Phase Services pursuant to Appendix "A", the OWNER shall pay, and the CONSTRUCTION MANAGER agrees to accept as full compensation, the following:

1. Actual Direct Salary of all employees of the CONSTRUCTION MANAGER, other than Principals, assigned to the Project. Actual Direct Salary, as used herein, shall not include allowances for insurances, payroll taxes, or other benefits listed in item A.2., Fringe Benefits.

Employees shall be paid their regular rate of pay while on vacation, holiday, and sick leave only in proportion to the period of time in which they are working on the Project. The CONSTRUCTION MANAGER's leave payment policy is subject to pre-approval by the OWNER. Pay rates for employees and their appropriate titles are listed in Appendix "B", entitled SCHEDULE OF APPROVED PERSONNEL CLASSIFICATIONS AND MAXIMUM DIRECT SALARY RATES, which is attached to and made a part hereof.

Certified payroll records for all employees for which reimbursement is sought under Article V.A. shall be supplied to the OWNER upon request and made available to the OWNER for inspection or audit at the OWNER's option at any time during the life of this Agreement and for a period of six (6) years after final payment.

Reimbursement to the CONSTRUCTION MANAGER for Actual Direct Salary costs for Construction Phase Services shall Not Exceed Three Million, Six Hundred Twenty-nine Thousand, Seven Hundred Sixty and 00/100 Dollars (\$3,629,760.00).

2. Fringe Benefits are the actual cost to the CONSTRUCTION MANAGER of Fringe Benefits applicable to Actual Direct Salary costs pursuant to Article V.A.1. above. Allowable Fringe Benefit items as provided for herein shall be limited to the following specific items:

- a. F.I.C.A.;
- b. Federal Unemployment Insurance;
- c. State Unemployment Insurance;
- d. NYS Workers Compensation;
- e. Life Insurance;
- f. Accidental Death and Dismemberment;
- g. NYS Disability Insurance;
- h. Group Hospitalization;
- i. Pension Plan; and
- j. Group Travel Accident Insurance.

Reimbursement to the CONSTRUCTION MANAGER of Fringe Benefit costs for Construction Phase Services shall be paid at actual cost of the approved Fringe Benefits per title and shall Not Exceed Seven Hundred Ninety-seven Thousand, Four Hundred Ninety and 00/100 Dollars (\$797,490.00).

Total Actual Direct Salaries and Fringe Benefits \$4,427,250 NTE

If the CONSTRUCTION MANAGER at any time estimates that the total of Actual Direct Salary and Fringe Benefit costs may exceed the above total, it shall promptly notify the OWNER in writing giving full explanation for such increase. If the OWNER agrees that said increase is necessary and justified, this Agreement shall be amended to reflect the increased amount. No liability shall accrue to the OWNER until such time as written approval and authorization for said increase has been given by the OWNER to the CONSTRUCTION MANAGER.

3. Consultant's Costs, if required, shall be approved by the OWNER. Monthly bills for said Consultant's Costs shall be submitted to the OWNER together with sufficient supporting documentation in form and content satisfactory to the OWNER. The CONSTRUCTION MANAGER shall not be reimbursed any markup on Consultant's Costs.

4. Fixed Fee will be paid in the amount of One Million, Five Hundred Five Thousand and 00/100 Dollars (\$1,505,000.00) which includes all home office overhead, Principal and/or Executive level involvement, and profit. The Fixed Fee shall be adjusted at the time additional personnel are assigned.

The Fixed Fee of \$1,505,000.00 pursuant to Article V.A.4. shall be reimbursed in 45 equal monthly payments of \$32,700 and one final payment of \$33,500. Reimbursement of this portion of the Fixed Fee shall commence with the CONSTRUCTION MANAGER's monthly requisition for the prime Construction Phase currently scheduled for February 1, 1997.

Payment for Early or Extended Completion Time. If all the work is completed prior to the planned Completion Date of June 30, 2000, as provided for in Article XIV, the balance of the Fixed Fee shall be paid with the final payment.

If, through no fault of the CONSTRUCTION MANAGER, the work is not completed by the planned Completion Date of June 30, 2000, as provided for in Article XIV, then the OWNER shall continue to reimburse the CONSTRUCTION MANAGER for Approved Actual Direct Salary and Fringe Benefit costs pursuant to Article V.A.1. and 2.

If, through no fault of the CONSTRUCTION MANAGER the work is not completed by December 31, 2000, the monthly Fixed Fee shall become re-negotiable between the OWNER and the CONSTRUCTION MANAGER.

5. The MAXIMUM AMOUNT PAYABLE to the CONSTRUCTION MANAGER for all Services required pursuant to this Construction Phase shall be the sum of paragraphs 1., 2., 3., and 4. of Article V.A. and shall Not Exceed Five Million, Nine Hundred Thirty-two Thousand, Two Hundred Fifty and 00/100 Dollars (\$5,932,250.00).

The MAXIMUM AMOUNT PAYABLE is summarized in Appendix "C", entitled SUMMARY OF PAYMENTS, which is attached to and made a part hereof.

Payments for Services shall be made monthly as approved by the OWNER. Payments shall be requisitioned on the OWNER's form, PERSONAL SERVICES AGREEMENT REQUISITION, with accompanying backup. Only said form shall be used for reimbursement of Services.

#### ARTICLE VI: FINAL PAYMENT AND RELEASE

Upon satisfactory completion by the CONSTRUCTION MANAGER and acceptance by the OWNER of all Services required pursuant to this Agreement, or all Services performed prior to the termination of said Agreement if so terminated, final payment shall be made to the CONSTRUCTION MANAGER.

Acceptance by the CONSTRUCTION MANAGER of final payment hereunder shall operate as, and shall be, a release to the OWNER from all claims and liability to the CONSTRUCTION MANAGER and its successors, legal representatives, and assigns for anything done or furnished under or arising out of the provisions of this Agreement. No payment, final or otherwise, shall release the CONSTRUCTION MANAGER from any obligations under this Agreement.

**ARTICLE VII: OWNER'S PROCEDURE**

The CONSTRUCTION MANAGER agrees to comply with all procedural requirements of the OWNER as they apply to reports or other aspects of the Project. In addition, during the Construction Phase of this Agreement, the CONSTRUCTION MANAGER shall comply with all procedural requirements of the Client. Client is herein defined as the entity for whom the OWNER is performing services, including subsidiaries, agents, related corporations, or fiduciaries.

**ARTICLE VIII: INSURANCE PROVIDED BY CONSTRUCTION MANAGER**

A. CONSTRUCTION MANAGER shall procure and shall maintain all the insurance required under this Article until Final Acceptance of all the Work. The CONSTRUCTION MANAGER shall not commence work under this Agreement until the CONSTRUCTION MANAGER has obtained and required each of its Contractors or Subcontractors to obtain all of the insurance required under this Article.

The CONSTRUCTION MANAGER and each of its Contractors and Subcontractors of every tier shall provide insurance as follows:

1. Workers' Compensation and Employers Liability Insurance
  - a. Statutory Workers' Compensation (including occupational disease)
  - b. Employers Liability (with a minimum limit of \$100,000)  
New York Statutory Endorsement
2. New York State Disability Benefit Insurance
3. Commercial General Liability (CGL) with a combined single limit for Bodily Injury, Personal Injury and Property Damage of at least \$5,000,000 per occurrence and aggregate. The limit may be provided through a combination of primary and umbrella/excess liability policies. Coverage shall provide and encompass at least the following:
  - a. Excavation, Collapse and Underground Hazards (X, C and U), where applicable;
  - b. Independent Contractors;
  - c. Blanket Written Contractual Liability covering all Indemnity Agreements, including all indemnity obligations contained in the Agreement;
  - d. Products Liability and Completed Operations;
  - e. CGL coverage written on an occurrence form;
  - f. Endorsement naming the Dormitory Authority - State of New York, City University of New York and City University of New York Construction Fund as Additional Insureds
  - g. Policy or policies must be endorsed to be primary as respects the coverage afforded the Additional Insureds and such policy shall be primary to any other insurance maintained by the OWNER. Any other insurance maintained by the Owner shall be excess of and shall not contribute with the CONSTRUCTION MANAGER'S, its Contractor's or Subcontractor's insurance, regardless of the "other insurance" clause contained in the OWNER'S own policy of insurance.
4. Commercial Automobile Liability and Property Damage Insurance covering all owned, leased, hired and non-owned vehicles used in connection with the Work with a combined single limit for Bodily Injury and Property Damage of at least \$1,000,000 per occurrence. The limit may be provided through a combination of primary and umbrella/excess liability policies.

5. Umbrella and/or Excess Liability policies used to comply with CGL, Automobile Liability and Employers Liability limits shown above may be warranted to be in excess of limits provided by primary CGL, Automobile Liability and Employer's Liability, but not excess to other insurance maintained by the OWNER.

B. Two (2) Certificates of Insurance, indicating the Project, must be submitted and approved by the OWNER prior to the commencement of work. Certificates shall provide thirty (30) days written notice prior to the cancellation, non-renewal, or material modification of any policy. Upon request, the CONSTRUCTION MANAGER shall furnish the OWNER with certified copies of each policy.

Certificates are to be forwarded to:

Contracts and Cost Control Unit  
 Dormitory Authority--State of New York  
 161 Delaware Avenue  
 Delmar, NY 12054

Sample forms of the Certificate(s) Insurance are attached. Certificate(s) of Insurance, when submitted to the OWNER, constitutes a warranty by the CONSTRUCTION MANAGER that the insurance coverage described is in effect for the policy term shown.

Should the CONSTRUCTION MANAGER engage a Contractor or Consultant, the same conditions as are applicable to the CONSTRUCTION MANAGER under these insurance requirements shall apply to each Contractor or Consultant of every tier. Proof thereof shall be supplied to the Dormitory Authority's Risk Management Unit.

C. All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least B+ by A.M. Best and Company, or meet such other requirements as are acceptable to the OWNER.

D. Should the CONSTRUCTION MANAGER fail to provide or maintain any insurance required by this contract, the OWNER may, after providing written notice to the CONSTRUCTION MANAGER, purchase insurance complying with the requirements of this Article and charge back such purchase to the CONSTRUCTION MANAGER.

E. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the CONSTRUCTION MANAGER shall immediately cease work on the Project. The CONSTRUCTION MANAGER shall not resume work on the Project until authorized to do so by the OWNER. Any delay or time lost as a result of the CONSTRUCTION MANAGER not having insurance required by this Article shall not give rise to a delay claim or any other claim against the OWNER or the Client.

F. Notwithstanding any other provision in this Article, the OWNER may require the CONSTRUCTION MANAGER to provide, at the expense of the OWNER, any other form or limit of insurance necessary to secure the interests of the OWNER.

G. The CONSTRUCTION MANAGER shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the CONSTRUCTION MANAGER. The requirement to secure and maintain such insurance is solely for the benefit of the CONSTRUCTION MANAGER. Failure of the CONSTRUCTION MANAGER to secure such insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their

agents and employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.

H. Neither the procurement nor the maintenance of any type of insurance by the OWNER, the Subcontractor(s) of the CONSTRUCTION MANAGER or the CONSTRUCTION MANAGER shall in any way be construed or deemed to limit, discharge, waive or release the CONSTRUCTION MANAGER from any of the obligations or risks accepted by the CONSTRUCTION MANAGER or to be a limitation on the nature or extent of said obligations and risks.

I. The Agreement may, at the sole option of the OWNER, be declared void and of no effect if the CONSTRUCTION MANAGER fails to comply with the provisions of this Article.

J. The CONSTRUCTION MANAGER and its Contractors shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the OWNER and of the insurance companies issuing such policies.

#### ARTICLE IX: INSURANCE PROVIDED BY THE OWNER

A. Builders Risk except as otherwise specified herein, at all times during the period of construction and until physical completion and acceptance, the Owner shall procure and maintain, at the cost and expense of the OWNER, "All Risk" Builder's Risk Insurance. The OWNER, CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER's Contractor and Subcontractors will be Named Insureds with waiver of subrogation against any such Insureds. There is a deductible provision for all losses in the amount of five thousand dollars (\$5,000). Losses, incurred by the CONSTRUCTION MANAGER, up to and including the amount of the deductible provision, shall be borne by the CONSTRUCTION MANAGER. Reimbursement for loss, if any, is to be made payable to the OWNER on behalf of and for the Named Insureds as their interests may appear. The OWNER shall, at the OWNER'S sole discretion, have power to adjust and to settle with the insurer any loss or claim under said insurance.

B. Coverage shall include sub-limits for property in transit and for property in storage on and off the job site. Specific higher limits for transit/storage are available as circumstances may require upon request by any Named Insured to the OWNER'S Risk Management Unit.

#### ARTICLE X: INSURANCE PROVIDED BY PRIME CONTRACTORS

The OWNER shall include in the contracts between the OWNER and each of the separate Prime Contractors the following requirements:

1. The CONSTRUCTION MANAGER be specifically named as an indemnity in the Indemnification and Hold Harmless furnished by each of the Prime Contractors to the OWNER; and
2. That the CONSTRUCTION MANAGER be specifically included as an Additional Insured in all liability insurances furnished by each of the Prime Contractors to the OWNER.
3. Insurance provided by the Prime Contractors is required to be endorsed as primary with respect to the coverage afforded to the additional insureds.
4. It shall be the responsibility of the CONSTRUCTION MANAGER to obtain a copy of each Prime Contractors Certificate of Insurance, in order to ensure that the CONSTRUCTION MANAGER is included as an additional insured thereunder.

**ARTICLE XI: PROTECTION OF RIGHTS, PERSONS, AND PROPERTY****A. Accident Prevention**

The CONSTRUCTION MANAGER shall, at all times, take every precaution against injuries to persons or damage to property and for the safety of persons engaged in the performance of its Work on the Job Site. The CONSTRUCTION MANAGER shall establish and maintain, at all times, safety procedures in connection with its Work as required by the current New York Labor Law and regulations of the Occupational Safety and Health Act (OSHA).

**B. Protection of Work and Property**

1. The CONSTRUCTION MANAGER shall use its best efforts to see that its Contractor and subcontractor shall, at all times, guard the OWNER'S property from injury or loss in connection with its work, the Prime Contractor's Construction Work and adjacent property.

2. The CONSTRUCTION MANAGER shall use its best efforts to see that its Contractor shall be responsible for protecting the materials stored by its Contractor both on and off site. The CONSTRUCTION MANAGER shall report any loss, theft, burglary, vandalism, or damage of materials or installed work to the OWNER by telephone and "FAX" as soon as it is discovered. If vandalism, theft, or burglary are suspected as the cause of the loss, the CONSTRUCTION MANAGER shall notify site security personnel and the municipal police. The CONSTRUCTION MANAGER shall also ensure the protection of the place of the loss until released from protection by the OWNER or the OWNER's Representative. The CONSTRUCTION MANAGER shall ensure that no potential evidence relating to the loss is removed from the place of the loss. Failure of the CONSTRUCTION MANAGER to comply with all of the above shall result in the CONSTRUCTION MANAGER bearing full financial responsibility for any losses.

**C. Risks Assumed by the CONSTRUCTION MANAGER**

1. The CONSTRUCTION MANAGER solely assumes the following distinct and several risks whether said risks arise from acts or omissions, whether supervisory or otherwise, including unforeseen obstacles and difficulties which may be encountered in the prosecution of its Work, and whether said risks involve any legal duty, primary or otherwise, imposed upon the OWNER or the Client excepting only risks which arise from faulty designs as shown by the plans and specifications or from affirmative acts of the OWNER, the Client, or the OWNER's members, officers, employees, or representatives, (hereinafter Protected Persons), committed with intent to cause the loss, damage, or injuries hereinafter set forth:

- a. the risk of loss or damage to its Work or to any plant, equipment, tools, materials, or property furnished, used, installed, or received by the Protected Persons. The CONSTRUCTION MANAGER shall bear said risk of loss or damage until its Work is completed or until completion or removal of said plant, equipment, tools, materials or property from the site and the vicinity thereof, whichever event occurs last, and in the event of said loss or damage, the CONSTRUCTION MANAGER shall timely repair, replace or make good any said loss or damage after notification to the OWNER's representative and Risk Management Unit, and;
- b. The risk of claims, just or unjust, by third persons against the Protected Persons on account of wrongful death, bodily injuries, and property damage, arising or alleged to arise out of, or as a result of, or in connection with the performance by the CONSTRUCTION MANAGER of its Work. The CONSTRUCTION MANAGER shall bear the risk for all deaths, injuries, damages, or losses sustained or alleged to have been sustained prior to the Final Acceptance of its Work, or resulting from the

CONSTRUCTION MANAGER's negligence or alleged negligence which is discovered, appears, or is manifested after acceptance by the OWNER, and;

c. the CONSTRUCTION MANAGER assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting therefrom, to all persons, whether employees of the CONSTRUCTION MANAGER or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the negligent or alleged negligent execution of its Work. The CONSTRUCTION MANAGER shall assume the defense and pay on behalf of the Protected Persons, any and all loss, expense, damage, or injury that the Protected Persons, may sustain as the result of any claim. The CONSTRUCTION MANAGER agrees to assume, and pay on behalf of the Protected Persons, the defense of any action at law or equity which may be brought against the Protected Persons. The assumption of defense and liability by the CONSTRUCTION MANAGER includes, but is not limited to: the amount of any legal fees associated with defending, all costs of investigation, expert evaluation, and any other costs including any judgment or interest or penalty that may be entered against the Protected Persons, in any said action.

2. The CONSTRUCTION MANAGER's obligations under this Article shall not be deemed waived, limited, or discharged by the enumeration of procurement of any insurance for liability for damages.

3. Neither Final Acceptance of the Work nor making any payment shall release the CONSTRUCTION MANAGER from the CONSTRUCTION MANAGER's obligations under this Article. The enumeration elsewhere in the Agreement of particular risks assumed by the CONSTRUCTION MANAGER or of particular claims for which the CONSTRUCTION MANAGER is responsible shall not be deemed to limit the effect of the provisions of this Article or to imply that the CONSTRUCTION MANAGER assumes, or is responsible for, only risks or claims of the type enumerated; and neither the enumeration in this Article nor the enumeration elsewhere in the Agreement of particular risks assumed by the CONSTRUCTION MANAGER of particular claims for which the CONSTRUCTION MANAGER is responsible shall be deemed to limit the risks which the CONSTRUCTION MANAGER would assume or the claims for which the CONSTRUCTION MANAGER would be responsible in the absence of said enumerations.

D. Protection of Lives and Health

1. The CONSTRUCTION MANAGER shall make daily observations of the safety practices of all Prime Contractors and their Subcontractors work activities on the job site and check their compliance with municipal, state and federal safety requirements. If a safety violation is found, the CONSTRUCTION MANAGER shall give the Prime Contractor or Subcontractor immediate written notice of the deficiency, and require correction of the safety violation before work continues. If the Prime Contractor or Subcontractor does not correct the deficiency within three (3) hours of notice from the CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER may require the Prime Contractor or Subcontractor to leave the job site or may authorize a separate Contractor to erect or provide the required safety structures, equipment, or procedures. All costs related to using a separate Prime Contractor to provide safety structures, equipment, or procedures shall be paid by the Contractor or Subcontractor that failed to comply in a timely manner to the CONSTRUCTION MANAGER's notice.

The CONSTRUCTION MANAGER shall conduct weekly safety meetings with the Prime Contractor and Subcontractor to review compliance with the safety precautions and programs required by their respective contracts.

The CONSTRUCTION MANAGER shall provide a copy of all notices under this section to the OWNER's Risk Management Unit.

Any slow down or delay in work caused by actions under this section shall not be a valid basis for a delay or loss of income claim by the CONSTRUCTION MANAGER.

2. The CONSTRUCTION MANAGER shall make its best effort to see that the Prime Contractors and Subcontractors on the project shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment of Construction Work under the Prime Contract, and shall immediately notify the OWNER in writing of any injury which results in hospitalization or death. The CONSTRUCTION MANAGER shall require the Prime Contractor and Subcontractors to provide to the OWNER a copy of Form C-2, Employers Report of Injury/Illness within twenty-four (24) hours of any job related injury on the OWNER's job site. Further, a copy of the OSHA Log of Injury and Illness shall also be provided to the OWNER for any reporting period in which a job related injury or illness is recorded. The CONSTRUCTION MANAGER shall also provide a list of witnesses to the OWNER. The list shall at least include the full name, home address, occupation, and telephone number of each person who saw or has knowledge of the incident which caused the injury or illness.

3. The OWNER or OWNER's Representatives may inspect the job site at any time without notice to the CONSTRUCTION MANAGER. If the OWNER finds that the CONSTRUCTION MANAGER is not complying with sections A. through D., the OWNER may send written notice to the CONSTRUCTION MANAGER to correct any deficiency. If upon re-inspection, the OWNER finds the deficiencies have not been corrected, the OWNER may let a separate contract to correct any deficiencies and charge back the cost of the separate Contract to the CONSTRUCTION MANAGER at a premium rate. The CONSTRUCTION MANAGER cannot pass these additional charges onto the OWNER. No action taken under this section shall be deemed as a basis for any delay claim or any other claim against the OWNER by the CONSTRUCTION MANAGER.

4. The CONSTRUCTION MANAGER shall preserve and safeguard the scene of any job site accident involving a ladder, scaffold, mobile machinery, equipment, safety railing, or uncovered floor opening, or any other accident where the injured person required emergency medical treatment. The CONSTRUCTION MANAGER shall "tape off" the area, and not allow any material object or property to be altered, changed, moved, or removed from the accident site. In addition to "taping off" the accident site, the CONSTRUCTION MANAGER shall telephone and "FAX" the OWNER's Project Manager and Risk Management Unit immediately, and post a person at the accident site to protect it. Safeguarding and protecting the accident site shall only be abandoned by the CONSTRUCTION MANAGER upon release by the OWNER or the OWNER's Representative. Failure of the CONSTRUCTION MANAGER to comply with the provisions of this paragraph shall be deemed a breach of this Agreement.

5. The CONSTRUCTION MANAGER shall prepare and deliver to the OWNER a site specific job safety and security program. Special emphasis must be given to access to emergency medical treatment, first aid, evacuation, and basic safety training including orientation of each worker on the specific inherent safety risks of the job site and specific training required by OSHA. The security element of the plan shall include special consideration for protection if the project is in a high crime area.

#### ARTICLE XII: HOLD HARMLESS

In addition to any risks specifically assumed by the CONSTRUCTION MANAGER under Article XI, the CONSTRUCTION MANAGER hereby agrees to indemnify and hold harmless the OWNER, the Client, the OWNER's members, officers, employees, or representatives, against all claims arising out of the negligent acts, alleged negligent acts, or failure to act, by the CONSTRUCTION MANAGER, and shall pay any judgment or expense, including interest, imposed against any of them for personal injury, wrongful death or property

damage, and to defend and pay the costs and expenses thereof, any action, proceeding or lawsuit brought against the parties indemnified and held harmless herein.

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made which allocates responsibility to the OWNER, the Client, or the OWNER's members, officers, employees, or representatives, the OWNER agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any money judgment for which the OWNER is responsible, and the OWNER agrees to pay the CONSTRUCTION MANAGER the percentage of defense costs which the CONSTRUCTION MANAGER incurred based upon an apportionment of the OWNER's allocated responsibility.

#### ARTICLE XIII: OWNER'S RIGHT TO AUDIT AND INSPECT RECORDS

The CONSTRUCTION MANAGER shall maintain, and shall keep for a period of six (6) years after the date of final payment, all records and other data relating to the Project, including records of its Subcontractors and suppliers. The OWNER or the OWNER's Representative shall have the right to inspect and audit all records and other data of the CONSTRUCTION MANAGER, its Subcontractors, and material suppliers relating to the Project.

#### ARTICLE XIV: APPENDIX "D" ADDITIONAL ITEMS

Attached to and made a part hereof is Appendix "D", entitled ADDITIONAL ITEMS.

#### ARTICLE XV: ASSIGNMENT

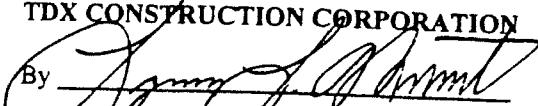
The Construction Manager shall not assign the Agreement in whole or in part without prior written consent of the OWNER.

#### ARTICLE XVI: TIME OF COMPLETION

The planned Completion Date for the Construction Phase shall be June 30, 2000, however, this Agreement shall survive and remain in full force and effect until the Work of this Agreement is completed.

IN WITNESS WHEREOF, the OWNER and CONSTRUCTION MANAGER have executed this Agreement as of this 12<sup>th</sup> day of May 1997.

TDX CONSTRUCTION CORPORATION

By 

Title President

DORMITORY AUTHORITY

By 

Title Deputy Executive Director, Construction

LPJ

## ACKNOWLEDGEMENT OF OFFICER OF OWNER EXECUTING CONTRACT

STATE OF NEW YORK)  
COUNTY OF ALBANY ) ss:

On this 21 day of July in the year 1997 before me personally came SAM R. DAVIDSON, who being by me known and duly sworn, did depose and say that he resides 35 Kennedy Drive, Colonie, New York 12205; that he is the Deputy Executive Director, of the Dormitory Authority, the corporation described in and which executed the above instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

PEARL ELLEN ROCK  
Notary Public, State of New York  
No. 01RO22790  
Qualified in Albany County  
Commission Expires Jan. 16, 1998

Pearl Ellen Rock  
Notary Public

## ACKNOWLEDGEMENT, IF A CORPORATION

STATE OF NY)  
COUNTY OF NY) ss:

On this 20 day of May in the year 1997 before me personally came Logan L. Hurst, to me known, who, being by me duly sworn, did depose and say that he resides at Brechin, NY; that he is the Treasurer of NYX Construction Corp, the corporation described in and which executed the above instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

KATHERINE ROBINSON  
Notary Public State of New York  
No. 01RO5045881  
Qualified in Queens County  
Commission Expires June 26, 1999

Katherine Robinson  
Notary Public

## ACKNOWLEDGEMENT, IF A PARTNERSHIP

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 19\_\_\_\_, before me personally came \_\_\_\_\_, known to me to be a member of the firm \_\_\_\_\_, described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for and in behalf of said firm for the uses and purpose mentioned therein.

\_\_\_\_\_  
Notary Public

## ACKNOWLEDGEMENT, IF AN INDIVIDUAL

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 19\_\_\_\_, before me personally came \_\_\_\_\_, known to me to be the person described in and who executed the foregoing instrument and he duly acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public

**CERTIFICATION OF NON-SEGREGATED FACILITIES;  
NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND  
COMPLIANCE WITH FEDERAL EQUAL EMPLOYMENT OPPORTUNITY ACT;  
COMMITMENT TO NEW YORK STATE BUSINESS ENTERPRISE;  
AND NON-COLLUSIVE BIDDING REQUIREMENT**

1. The CONSTRUCTION MANAGER certifies that the CONSTRUCTION MANAGER or its Subconsultant does not, nor shall not, maintain or provide for the employees of such CONSTRUCTION MANAGER or Subconsultant any segregated facilities at any establishments, of such CONSTRUCTION MANAGER or Subconsultant, and that the CONSTRUCTION MANAGER or Subconsultant shall not permit any employees, of such CONSTRUCTION MANAGER or Subconsultant, to perform services at any location, under the control of such CONSTRUCTION MANAGER or Subconsultant, where segregated facilities are maintained. The CONSTRUCTION MANAGER or Subconsultant agrees that a breach of this certification is a violation of the equal opportunity clauses of the Agreement. The CONSTRUCTION MANAGER or Subconsultant further agrees that, except in any instance in which the CONSTRUCTION MANAGER or Subconsultant has obtained identical certifications from proposed Subconsultants for specific time periods, such Consultants or Subconsultant shall obtain identical certifications from proposed Subconsultants prior to the award of subcontracts exceeding Ten Thousand Dollars (\$10,000.00); that such CONSTRUCTION MANAGER or Subconsultant shall retain such certifications in the files of such CONSTRUCTION MANAGER or Subconsultant.

2. The CONSTRUCTION MANAGER or Subconsultant further stipulates that it, and any individual or legal entity in which the CONSTRUCTION MANAGER or Subconsultant holds a ten percent (10%) or greater ownership interest and any such entity that holds such an interest in the CONSTRUCTION MANAGER or the Subconsultant, either:

- (i) has no business operations in Northern Ireland; or
- (ii) shall take all lawful steps in good faith to conduct any business operations it has or in which it has such an

interest in Northern Ireland in accordance with the MacBride Fair Employment Principles as set forth in Chapter 807 of the Laws of 1992 and shall permit any independent monitoring of its compliance with said Principles.

3. The CONSTRUCTION MANAGER attests to its compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended.

4. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors, and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers, including the Directory of Certified Minority and Women-Owned Business Enterprises, is available from the New York State Department of Economic Development.

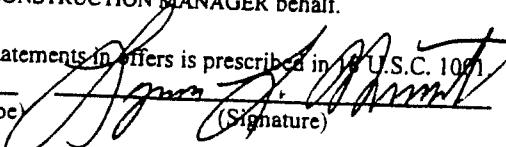
5. The Omnibus Procurement Act of 1992 (as amended) requires that by signing this bid/proposal, the CONSTRUCTION MANAGER certifies that whenever the total bid amount is greater than \$1million:

The CONSTRUCTION MANAGER has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the Owner.

The CONSTRUCTION MANAGER agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The CONSTRUCTION MANAGER agrees to document these efforts and to provide said documentation to the Owner upon request.

On contracts of One Million Dollars or more, the CONSTRUCTION MANAGER acknowledges notice of the requirement to cooperate with New York State in efforts to obtain offset credits from foreign countries as a condition of contract award.

6. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, the CONSTRUCTION MANAGER warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The CONSTRUCTION MANAGER further warrants that, at the time the CONSTRUCTION MANAGER submitted its bid, an authorized and responsible person executed and delivered to the Owner a non-collusive bidding certification on the CONSTRUCTION MANAGER behalf.

NOTE: The penalty for making false statements in offers is prescribed in 16 U.S.C. 1011  
Logan L. Hurst, TPEAS.   
 (Name and Title of Certifier-Please Type) Logan L. Hurst   
 (Signature) 5/12/99   
 (Date)

Department of the Treasury  
Internal Revenue ServiceRequest for Taxpayer  
Identification Number and Certification

<p>Name (If joint names, list first and circle the name of the person or entity whose number you enter in Part I below. See instructions on page 2 if your name has changed.)</p> <p><b>TDX Construction Corporation</b></p> <p>Business name (Sole proprietors see instructions on page 2.) (If you are exempt from backup withholding, complete this form and enter "EXEMPT" in Part II below.)</p>	
<p>Address (number and street)</p> <p>121 West 27th Street</p> <p>City, state, and Zip code</p> <p>New York, New York 10001</p>	
<p><b>Part I Taxpayer Identification Number (TIN)</b></p> <p>Enter your TIN in the Appropriate box. For individuals, this is your social security number (SSN). For sole proprietors, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How To Obtain a TIN below.</p> <p>Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.</p>	
<p><b>Part II</b></p> <p>List account number(s) here (optional)</p> <p>131303912514</p> <p>Social security number</p>	
<p>Requester's name and address (optional)</p>	

## Certification - Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

**Certification Instructions.**—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, the acquisition or abandonment or secured property, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (Also see Signing the Certification on page 2.)

## Sign

Here Signature

Section references are to the Internal Revenue Code

**Purpose of Form.**—A person who is required to file an information return with the IRS must obtain your current TIN to report income paid to you, real estate transactions, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an IRA. Use Form W-9 to furnish your correct TIN to the requester (the person asking you to furnish your TIN) and, when applicable, (1) to certify that the TIN you are furnishing is correct (or that you are waiting for a number to be issued), (2) to certify that you are not subject to backup withholding, and (3) to claim exemption from backup withholding if you are an exempt payee. Furnishing your correct TIN and making the appropriate certifications will prevent certain payments from being subject to backup withholding.

**Note:** If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form.

**How to Obtain a TIN.**—If you do not have a TIN, apply for one immediately. To apply, get Form SS-5, Application for Social Security Card (for individuals), from your local office of the Social Security Administration, or Form SS-4, Application for Employer Identification Number (for businesses and all other entities), from your local IRS office.

To complete Form W-9 if you do not have a TIN, write "Applied for" in the space for the TIN in Part I, sign and date the form, and give it to the requester. Generally, you will then have

60 days to obtain a TIN and furnish it to the requester. If the requester does not receive you TIN within 60 days, backup withholding, if applicable, will begin and continue until you furnish your TIN to the requester. For reportable interest or dividend payments, the payer must exercise one of the following options concerning backup withholding during this 60-day period. Under option (1), a payer must backup withhold on any withdrawals you make from your account after 7 business days after the requester receives this form back from you. Under option (2), the payer must backup withhold on any reportable interest or dividend payments made to your account, regardless of whether you make any withdrawals. The backup withholding under option (2) must begin no later than 7 business days after the requester receives this form back. Under option (2), the payer is required to refund the amounts withheld if your certified TIN is received within the 60-day period and you were not subject to backup withholding during that period.

**Note:** Writing "Applied for" on the form means that you have already applied for a TIN OR that you intend to apply for one in the near future.

As soon as you receive your TIN, complete another Form W-9, include your TIN, sign and date the form, and give it to the requester.

**What is Backup Withholding?**—Persons making certain payments to you after 1992 are required to withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding". Payments that could be subject to backup withholding include interest,

Date ► 12/97

dividends, broker and barter exchange transactions, rents, royalties, nonemployee compensation, and certain payments from fishing boat operators, but do not include real estate transactions.

If you give the requester you correct TIN, make the appropriate certifications, and report all your taxable interest and dividends on your tax return, your payments will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. The IRS notifies the requester that you furnished an incorrect TIN, or
3. You are notified by the IRS that you are subject to backup withholding because you failed to report all your interest and dividends on your tax return (for reportable interest and dividends only), or
4. You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable interest and dividend accounts opened after 1983 only), or
5. You do not certify your TIN. This applies only to reportable interest, dividend, broker, or barter exchange accounts opened after 1983, or broker accounts considered inactive in 1983.

Except as explained in 5 above, other reportable payments are subject to backup withholding only if 1 or 2 above applies. Certain payees and payments are exempt from backup withholding and information reporting. See Payees and Payments Exempt From

Instructions, below, if you are an exempt payee. Payees and Payments Exempt From Backup Withholding.—The following is a list of payees exempt from backup withholding and for which no information reporting is required. For interest and dividends, all listed payees are exempt except item (9). For broker transactions, payees listed in (1) through (13) and a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker are exempt. Payments subject to reporting under sections 6041 and 6041A are generally exempt from backup withholding only if made to payees described in items (1) through (7), except a corporation that provides medical and health care services or bills and collects payments for such services is not exempt from backup withholding or information reporting. Only payees described in items (2) through (6) are exempt from backup withholding for barter exchange transactions, patronage dividends, and payments by certain fishing boat operators.

(1) A corporation. (2) An organization exempt from tax under section 501(a), or an IRA, or a custodial account under section 403(b)(7). (3) The United States or any of its agencies or instrumentalities. (4) A state, the District of Columbia, a possession of the United States, or any of their political subdivisions, agencies, or instrumentalities. (5) A foreign government or any of its political subdivisions, agencies, or instrumentalities. (6) An international organization or any of its agencies or instrumentalities. (7) A foreign central bank of issue. (8) A dealer in securities or commodities required to register in the United States or a possession of the United States. (9) A futures commission merchant registered with the Commodity Futures Trading Commission. (10) A real estate investment trust. (11) An entity registered at all times during the tax year under the Investment Company Act of 1940. (12) A common trust fund operated by a bank under section 584(a). (13) A financial institution. (14) A middleman known in the investment community as a nominee or listed in the most recent publication of the American Society of Corporate Secretaries, Inc., Nominee List. (15) A trust exempt from tax under section 664 or described in section 4947.

Payments of dividends and patronage dividends generally not subject to backup withholding include the following:

- Payments to nonresident aliens subject to withholding under section 1441
- Payments to partnerships non engaged in a trade or business in the United States and that have at least one nonresident partner.
- Payments of patronage dividends not paid in money.
- Payments made by certain foreign organizations.
- Payments of interest generally not subject to backup withholding include the following:
- Payments of interest on obligations issued by individuals

Note: You may be subject to backup withholding if this interest is \$600 or more and is paid in the course of the payer's trade or business and you have not provided your correct TIN to the payer.

- Payments of tax-exempt interest (including exempt interest dividends under section 852)
- Payments described in section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under section 1451.
- Payments made by certain foreign organizations.
- Mortgage interest paid by you.

Form 8954 is also not subject to backup withholding. For details, see sections 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, and 6050N, and their regulations.

#### Penalties

**Failure to Furnish TIN.**—If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil Penalty for False Information With Respect to Withholding.**—If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal Penalty for Falsifying Information.**—Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.**—If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

#### Specific Instructions

**Name.**—If you are an individual, you must generally provide the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage, without informing the Social Security Administration of the name change, please enter your first name, the last name shown on your social security card, and your new last name.

If you are a sole proprietor, you must furnish your individual name and either your SSN or EIN. You may also enter your business name or "doing business as" name on the business name line. Enter your name(s) as shown on your social security card and/or as it was used to apply for your EIN on Form SS-4.

#### Signing the Certification.

##### 1. Interest, Dividend, Broker, and Barter Exchange

**Accounts Opened Before 1984 and Broker Accounts Considered Active During 1983.** You are required to furnish your correct TIN, but you are not required to sign the certification.

##### 2. Interest, Dividend, Broker, and Barter Exchange Accounts Opened After 1983 and Broker Accounts Considered Inactive During 1983.

You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real Estate Transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other Payments.** You are required to furnish your correct TIN, but you are not required to sign the certification unless you have been notified of an incorrect TIN. Other payments include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services, payments to a nonemployee for services (including attorney and accounting fees), and payments to certain fishing boat crew members.

**5. Mortgage Interest Paid by You, Acquisition or Abandonment of Secured Property, or IRA Contributions.** You are required to furnish your correct TIN, but you are not required to sign the certification.

**6. Exempt Payees and Payments.** If you are exempt from backup withholding, you should complete this form to avoid possible erroneous

entry. Fill in the TIN in the block in Part I and sign and date the form. If you are a nonresident alien or foreign entity not subject to backup withholding, give requester a completed Form W-8, Certificate of Foreign Status.

**7. TIN "Applied for."** Follow the instructions under How to Obtain a TIN, on page 1, and sign and date this form.

**Signature.**—For a joint account, only the person whose TIN is shown in Part I should sign.

**Privacy Act Notice.**—Section 6109 requires you to furnish your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an IRA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 31% of taxable interest, dividend, and certain other payments to a payee who does not furnish a TIN to a payer. Certain penalties may also apply.

#### What Name and Number to Give

the Requester	Give name and SSN of:
For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner or, if combined funds, the first individual on the account
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law.	The actual owner <sup>1</sup>
5. Sole proprietorship	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Sole proprietorship	The owner <sup>3</sup>
7. A valid trust, estate, or pension trust.	Legal entity <sup>4</sup>
8. Corporate	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> Show you individual name. You may also enter your business name. You may use your SSN or EIN.

<sup>4</sup> List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal

representative or trustee unless the legal entity itself is not designated in the account title).

Note: If no name is circled when there is more than one name, the number will be considered to

## APPENDIX "A"

SCOPE OF SERVICESCONSTRUCTION PHASE

The CONSTRUCTION MANAGER shall perform the following services in relation to:

1. General Administration

- a. Serve as the OWNER's chief representative in the field and maintain liaison amongst the OWNER, the Architect, and all Prime Contractors.
- b. Establish an organization to effect a positive means by which the Project will be controlled, coordinated, and expedited. On-site staffing shall be agreed upon by the OWNER and CONSTRUCTION MANAGER and in accordance with Appendix "B", which is annexed hereto and made a part hereof.
- c. Develop a project "Procedures Manual" within the scope of the Construction Contracts. After review with the OWNER, implement said manual and enforce the procedures.
- d. Receive, investigate, and reply to all Prime Contractors' correspondence pertaining to the Construction Work. Take appropriate action as required.
- e. Prepare, develop, maintain, and safeguard all inclusive on-site record keeping systems that meet with the OWNER's approval.
- f. Coordinate with the appropriate parties the delivery and installation of OWNER purchased furnishings and equipment.
- g. Supply the OWNER and the OWNER's Representative (if requested) with a copy of all correspondence, reports, comments, transmittals, requests, and other information relating to the Construction Contracts.

2. Meetings

- a. Conduct all job progress meetings and job coordination meetings as required.
- b. Record, transcribe, and issue, within four (4) working days of the date of any job meeting, minutes of said meeting.
- c. Attend and record miscellaneous meetings with the OWNER, Architect, or Prime Contractors.

3. Shop Drawings and Samples

- a. Review all shop drawings for coordination of field conditions among the Prime Contractors, Subcontractors, trades, etc., prior to submittal to the Architect for his review and approval. Return shop drawings, as necessary, for corrections.
- b. Receive all samples and forward to Architect for approval.

**4. Testing/Inspection**

Coordinate and monitor all testing and inspection programs. Issue reports that include date, persons present, results, and test/inspection criteria or standards.

**5. Quality Control**

- a. Assure all required clarifications and revisions to Contract Documents are issued to the appropriate Prime Contractor as directed by the OWNER and/or Architect.
- b. Inspect all work daily for quality and conformance to the Contract Documents. Advise Prime Contractor(s) of necessary corrective work. Inspect materials and equipment prior to installation for conformance to the specifications.
- c. Prepare periodic "Exception Reports" as required by the Construction Work of the Prime Contractors. Distribute to the appropriate Contractor(s) for necessary corrective work. Maintain a log of the noted exception, date issued, and date corrected. Maintain a photographic record where life safety issues/systems are involved.
- d. Inspect the Project jointly with the OWNER and Architect prior to the time the OWNER is to use, occupy, or operate any part or all of the Project, and prepare a list of observed variances and deficiencies in the Construction Work. Distribute the list to the appropriate Prime Contractor(s) for necessary corrective work.
- e. Prepare jointly with Architect a "Final Punch List" for each Construction Contract. Distribute to the appropriate Prime Contractor(s) for necessary corrective action.
- f. At the time of substantial completion, prepare a list of any remaining items of work to be completed or corrected. Distribute to the appropriate Prime Contractor(s) for necessary work. Establish a value for each item of work remaining to be completed or corrected.
- g. Make final inspection of the Project with OWNER/Architect/ Engineer, using Contract Documents as a base to determine if the Contract requirements have been fulfilled. List any variances between Construction Contract requirements and Construction Work installed. Coordinate items which may appear on independent final lists prepared by the OWNER/Architect/ Engineer. Distribute to the appropriate Prime Contractor(s) for necessary corrective action.
- h. Follow up on all notices of corrective work to Prime Contractor(s) to assure satisfactory and timely completion of the Construction Work.

**6. Affirmative Action Program**

Assist in the implementation of the OWNER's Affirmative Action Program with regard to Equal Opportunities and Minority Business Enterprise participation.

**7. Progressing the Work**

- a. Expedite and coordinate the work of all Prime Contractors.
- b. Expedite and coordinate the progress of Architects and other Consultants.
- c. Determine the cause of and responsibility for any delays. Recommend appropriate remedial action.

d. Be cognizant of potential delays and direct the Prime Contractor(s) to take the necessary measures to eliminate circumstances which may lead to a delay.

#### **8. Payments to Prime Contractors**

a. Progress Payments:

- 1) Review and recommend for the OWNER's approval, the Prime Contractor's detailed payment breakdown.
- 2) Review each Prime Contractor's monthly invoices and recommend payment, no payment, or partial payment.

b. Final Payment:

- 1) Establish that all close-out procedures have been complied with.
- 2) Make recommendations on final payment.

#### **9. Change in the Work**

- a. Implement and enforce the OWNER's procedure for the processing of Change Orders.
- b. Consult with the Architect concerning proposed design changes and obtain the OWNER's approval for same. The Architect will be responsible to design approved changes.
- c. Make recommendations to the OWNER for such changes in the Construction Work as the CONSTRUCTION MANAGER may consider necessary or desirable.
- d. Perform economic evaluation of all changes in the Construction Work and evaluate the effect on other work. Investigate alternatives, coordinate with the Architect, and make recommendations to the OWNER.
- e. Evaluate requests for extensions of time and make recommendations.
- f. Maintain daily cost accounting records with respect to work performed on a time and materials basis.

#### **10. Claims**

Analyze and evaluate all claims for Construction Contract time extension or cost adjustment. Make recommendations to the OWNER for resolution, approval, or disapproval.

#### **11. Reports**

Prepare and issue the following:

- a. daily reports in form acceptable to the OWNER;
- b. bi-weekly progress reports;
- c. all reports required by Federal authorities;
- d. Affirmative Action and EEO reports;

- e. periodic reports on compliance with Historic Preservation requirements, if any;
- f. for any job related injury prepare/obtain same day photographs, C-2 Form (employers first report of injury), OSHA Log of Illness and Injury, the CONSTRUCTION MANAGER's daily log, and any other incident/accident reports, and immediately forward to the OWNER's Risk Management Unit;
- g. for any job related property damage prepare/obtain same day photographs, the CONSTRUCTION MANAGER's daily log, and any other incident/accident reports, and immediately forward to the OWNER's Risk Management Unit;
- h. other reports which are from time to time required by the OWNER.

**12. Close Out**

- a. Establish that the following has been received from the Prime Contractor(s) and forwarded expeditiously to the appropriate party:

- 1) all necessary guarantees;
- 2) as-built drawings
- 3) operating and maintenance manuals;
- 4) certificates of compliance, etc.;
- 5) all turnover items required by Construction Contract; and
- 6) other items required by the Construction Contract.

Maintain a log of receipts and turnovers, and transmittals.

- b. Establish and document that all operating instructions have been given to the OWNER's personnel consistent with Construction Contract requirements. Perform all necessary coordination.

**13. Scheduling**

The CONSTRUCTION MANAGER shall provide Construction Phase Scheduling Services in accordance with the following requirements:

a. Precedence Diagram for Construction

- 1) Review the Construction Contract drawings and specifications, and prepare listings of the various items of work by trade responsibility for each phase of the Project. Determine approximate quantities and/or units available. Evaluate the overall Project to determine one or more possible approaches in construction.
- 2) Develop a precedence diagram based on the OWNER approved scheduling approach describing activities, as opposed to events, showing the interrelations of the activities described above. Included shall be activities for submission and approval of major shop drawings and delivery of major materials and equipment.
- 3) A copy of the precedence diagram with milestones shall be inserted into the Contract Documents prior to bidding.

b. Review and Preparation of Schedule

- 1) Initial Conferences

a) Conduct conferences with Prime Contractors and the OWNER's Representatives during the mobilization stage to determine sequential relationships and interdependence for each activity of the Project. Additional information to be developed in order to establish a practical work schedule includes:

- (1) an analysis of the various essential components, activities, and events required for a completed Project;
- (2) activities of the Architect and OWNER that affect the work progress such as approvals of shop drawings;
- (3) activities shall not be limited to actual construction operations but shall include preparation and submission of shop drawings and samples, procurement of materials and equipment, testing, and Architect and OWNER activities that may affect work progress; and
- (4) such other information as may be required to prepare a complete plan and work schedule under the proposed scheduling method.

2) Sixty Day Schedule

- a) Using the above information and data acquired from the Prime Contractor, develop preliminary network schedule for the Project including activities for deliveries and submittals. This network shall show in detail the Project schedule for the first sixty (60) calendar days.
- b) This coordinated schedule shall be furnished no later than fifteen days after the award of the contracts. Upon the OWNER's approval, it shall be used to monitor progress until the Total Project Schedule is developed.

3) Total Project Schedule for Construction Completion

- a) Prepare for submittal and approval the updated schedule for the Project based on the Construction Contractor's, Architect's, and OWNER's schedule information provided. The durations and manpower information will be analyzed and reviewed with the Prime Contractors, if necessary, in order to develop a complete network. The network presentation shall include a time scale using the manpower information to realistically schedule activities having float.
- b) If, during the preparation of the Total Project Schedule network, the computer analysis discloses a completion date not within the Contract time limits, the Prime Contractors will be instructed by the CONSTRUCTION MANAGER to effect such revisions that will result in a schedule that meets the OWNER's requirements. When the network satisfies the Construction Contract conditions, it is to be submitted as the Prime Contractor's Construction Schedule.
- c) The Total Project Schedule for all work shall be submitted to the OWNER and copies sent to the Prime Contractors within sixty (60) days after award of Construction Contracts.

4) Computer Reports

- a) The format for the computer printout reports shall include the following:
  - (1) Timing Status Report - itemize all activities on the progress schedule on an early start basis;
  - (2) Contract Report - a grouping of activities in each individual Construction Contract on an early start basis;
  - (3) Summary Bar Chart - Summarizes the actual work period for each Construction Contract; and
  - (4) Time-Scaled Network Plot - indicates critical activities for each Construction Contract.
- b) The Timing Status Report shall also show the following information for each activity:
  - (1) the current percentage completion;
  - (2) whether an activity is "on schedule" or "behind schedule"; and
  - (3) the latest and earliest scheduled finish date.

5) Cash - Flow Summary Report

Provide a standard S-Curve delineating monies to be expended over the estimated construction time period. This shall be accomplished by obtaining a dollar value from the contractors for each scheduled activity required on the Project. This data shall be superimposed and presented in a graphic form for reporting. The Prime Contractors are required to provide the data.

c. Monitoring of Construction Progress

- 1) Bi-Weekly Schedule Meetings
  - a) Bi-Weekly schedule meetings shall be held by the CONSTRUCTION MANAGER to review the overall progress schedule.
  - b) The frequency of the schedule meetings may vary through the project. The OWNER will determine the frequency of the meetings.

2) Field Information

- a) To initiate the reporting from the site, the Prime Contractor's, Architect's, and OWNER's Representative shall jointly prepare the input data. The CONSTRUCTION MANAGER shall visit the site in order to obtain the reporting information. The input data provided should contain the following information for all activities underway or completed:
  - 1) if the activity is underway:

a) the starting date of the activity commenced during the period; and

b) estimated duration remaining for the activity underway;

c) percentage complete for activity underway; or

2) if the activity has been completed, its completion date.

d. Updating Network and Reporting Procedure

1) The original Time Scale Network shall be updated following development of the Total Project Schedule as required to show the actual status of all activities in relation to the baseline Total Project Schedule. The critical path with the least amount of float will be posted. In the event items fall behind schedule, they will be re-plotted with partial time scaled network diagrams which will be provided for three (3) month intervals as the Construction Work progresses.

2) The following procedure shall be used to report on the construction schedule at the end of each progress updating period. The updating/progressing shall be done on a monthly basis, or as directed by the OWNER.

a) Obtain field information at the job site from the OWNER's and Prime Contractors' Representatives.

b) Review and analyze the data before inputting into the computer. Contact the job site by telephone when additional information is required to avoid costly computer trial runs and to insure a timely report.

e. Narrative

1) Provide a comprehensive narrative upon the completion of each updating which shall include the following information:

a) changes made to the Network Diagram and Schedule;

b) current status of the Project including the critical path;

c) listing of activities behind the initial time scale schedule;

d) a specific critical activity listing, including future potentially difficult areas.

2) Specific recommendations dealing with construction scheduling and sequencing shall be made for the purpose of keeping or returning the Project on schedule.

f. Report Distribution

Include in each updating,

1) the updated network schedule,

- 2) the updated computer reports
- 3) a current narrative report, and
- 4) an updated cash-flow summary report

Actual distribution to be made as directed by the OWNER.

g. Preservation of Records

In addition to the periodic distributions outlined herein, the CONSTRUCTION MANAGER shall maintain and safeguard a copy of all scheduling information outlined herein for turnover to the OWNER at the completion of the Project, or earlier if requested by the OWNER. The method intended for use by the CONSTRUCTION MANAGER in maintaining/ safeguarding this scheduling information must be submitted to the OWNER for review and pre-approval.

## APPENDIX "B"

SCHEDULE OF APPROVED PERSONNEL CLASSIFICATIONS  
AND MAXIMUM DIRECT SALARY RATES

<u>CLASSIFICATIONS</u>	<u>APPROVED MAXIMUM HOURLY RATES</u>
PROJECT EXECUTIVE	45.44
PROJECT MANAGER	44.91
ASST. PROJECT MANAGER	40.87
PROJECT ENGINEER GC	34.14
PROJECT ENGINEER MEP	34.14
SUPERINTENDENT	32.70
ASST. SUPERINTENDENT	31.26
MECH ENGINEER HVAC	33.22
MECH ENGINEER PLUMB.	38.26
ELECTRICAL ENGINEER	33.18
SITE SAFETY MANAGER	28.85
CHANGE ORDER MANAGER	31.74
CHANGE ORDER ESTIM.	25.97
SCHEDULER-P/T	26.45
PROJECT ACCOUNTANT	25.97
PLAN CLK/TRAINEE	15.39
ADMIN. ASSISTANT	14.43
SECRETARY	12.99
COMPUTER TECH	24.04

(1) Salaries

Approved Maximum Daily Rates are those maximum rates in effect through June 30, 1997. Maximum Hourly rates may be adjusted at the beginning of each salary year. Any adjustment is subject to review and pre-approval of the Director, Contracts and Cost Control Unit, and will not require a formal Amendment to this Agreement.

(2) Assignment of Personnel

Assignment and time durations of all Construction Management Personnel assigned to the Project by the CONSTRUCTION MANAGER shall be subject to the approval of the OWNER. The OWNER may request the CONSTRUCTION MANAGER to remove from the Project any employee the OWNER deems incompetent, careless, or otherwise objectionable and replace said employee with more suitable personnel. The OWNER may also approve additional personnel classifications if deemed necessary.

(3) Monthly Requisitions

All payment requisitions must account for the time of all personnel by name, title, and approved daily rates.

## APPENDIX "C"

SUMMARY OF PAYMENTSA. CONSTRUCTION PHASE

1.	<u>Actual Direct Salaries</u>	\$3,629,760 NTE
2.	<u>Fringe Benefits</u>	797,490 NTE
3.	<u>Consultant's Costs</u>	-0-
4.	<u>Fixed Fee</u>	1,505,000
5.	<u>MAXIMUM AMOUNT PAYABLE</u>	5,932,250 NTE

Payments for Services shall be made monthly as approved by the OWNER. Payments shall be requisitioned on the OWNER's form, PERSONAL SERVICES AGREEMENT REQUISITION, with accompanying backup. Only said form shall be used for reimbursement of Services.

NTE = Not to Exceed

LS = Lump Sum

**APPENDIX "D"**  
**ADDITIONAL ITEMS**

**1. LABOR LAW PROVISIONS**

- a. It is hereby agreed that all applicable provisions of the Labor Law of the State of New York shall be carried out in performance of the Work.
- b. The CONSTRUCTION MANAGER specifically agrees, as required by Labor Law, Sections 220 and 220-d as amended, that:
  - (1) no laborer, workmen, or mechanic, in the employ of the CONSTRUCTION MANAGER, SUBCONSULTANT, or other person doing or contracting to do the whole or any part of the work contemplated by this Agreement shall be permitted or required to work more than eight (8) hours in any one (1) calendar day or more than five (5) days in any one week, except in the emergencies set forth in the Labor Law;
  - (2) the wages paid for legal day's work shall be not less than the prevailing rate of wages as defined by law;
  - (3) the minimum hourly rate of wages to be paid shall be not less than that stated in this Agreement and shall be designated by the Industrial Commissioner of the State of New York; and
  - (4) the CONSTRUCTION MANAGER and every SUBCONSULTANT shall post in a prominent and accessible place on the Site, a legible statement of all minimum wage rates and supplements to be paid or provided for the various classes of laborers and mechanics to be engaged in the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.
- c. The minimum wage rates, if any, herein specified for apprentices shall apply only to persons working with the tools of the trade which said persons are learning under the direct supervision of journeyman mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the CONSTRUCTION MANAGER or any SUBCONSULTANT shall not exceed the number submitted by the applicable standards of the New York State Department of Labor, or, in the absence of said standards, the number permitted under the usual practice prevailing between the unions and the employer's association of the respective trades or occupations.
- d. All employees of the CONSTRUCTION MANAGER and each SUBCONSULTANT shall be paid in accordance with the provisions of the Labor Law. All payments shall be made in cash, except a payment may be made by check upon a certificate of the Industrial Commissioner of the State of New York. Certified payroll copies shall be provided to the OWNER upon request.
- e. The CONSTRUCTION MANAGER agrees that, in case of underpayment of wages to any worker engaged in the Work by the CONSTRUCTION MANAGER or any SUBCONSULTANT, the OWNER shall withhold from the CONSTRUCTION MANAGER, out of payments due, an amount sufficient to pay said worker the difference between the wages required to be paid under this Agreement and rates actually paid said worker for the total number of hours worked and that the OWNER may disburse said amount so withheld by the OWNER for and on account of the CONSTRUCTION MANAGER to the employees to whom said amount is due. The CONSTRUCTION MANAGER further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by the OWNER pursuant to other provisions of this Agreement.
- f. Pursuant to subdivision 3 of section 220 and section 220-d of the Labor Law this Agreement may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:
  - (1) the stipulated wage scale as set forth in Labor Law; Section 220, subdivision 3, as amended, or

(2) less than the stipulated minimum hourly wage scale as specified in Labor Law, Section 220-d, as amended.

g. The CONSTRUCTION MANAGER specifically agrees, as required by the Labor Law, Section 220-e, as amended, that:

(1) in the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, or for the manufacture, sale, or distribution of materials, equipment, or supplies hereunder, but limited to operation performed within the territorial limits of the State of New York, no CONSTRUCTION MANAGER, nor any person acting on behalf of said CONSTRUCTION MANAGER or SUBCONSULTANT, shall by reason of race, creed, color, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(2) no CONSTRUCTION MANAGER, nor any person on behalf of said CONSTRUCTION MANAGER or SUBCONSULTANT shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, sex, or national origin;

(3) there may be deducted from the amount payable to the CONSTRUCTION MANAGER, by the OWNER under this Agreement, a penalty of Fifty and 00/100 Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of this Agreement; and

(4) this Agreement may be canceled or terminated by the OWNER and all money due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of this Agreement.

h. The CONSTRUCTION MANAGER specifically agrees:

(1) that the CONSTRUCTION MANAGER will certify its payrolls and keep these certified records on site and available, and provide copies to the OWNER upon request.

(2) that, as part of the required posting of wage schedules, the CONSTRUCTION MANAGER will display on the job site, in a conspicuous place, posters and wallet size cards supplied by the Department of Labor which inform employees of their entitlement to receive prevailing wages and supplements as determined by the Department of Labor.

(3) that the CONSTRUCTION MANAGER will provide each worker with a written notice informing the worker of the prevailing wage requirements for the job. The notice shall contain a simple statement or declaration for the worker's signature, which the CONSTRUCTION MANAGER shall obtain, attesting to the fact that the worker was given this information. Records must be maintained on site and made available, and copied to the OWNER upon request.

## 2. NONDISCRIMINATION

During the performance of this Agreement, the CONSTRUCTION MANAGER agrees as follows:

a. The CONSTRUCTION MANAGER will not discriminate against any employees or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status.

b. If directed to do so by the Commissioner of Human Rights, the CONSTRUCTION MANAGER will send to each labor union or representative of workers with which the CONSTRUCTION MANAGER has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising said labor union or representative of the CONSTRUCTION MANAGER's agreement under

clauses a. through g. (hereinafter called "nondiscrimination clauses"). If the CONSTRUCTION MANAGER was directed to do so by the contracting agency as part of the bid or negotiation of this Agreement, the CONSTRUCTION MANAGER shall request said labor union or representative to furnish a written statement that said labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability, or marital status, and that said labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these nondiscrimination clauses and that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Agreement shall be in accordance with the purposes and provisions of these nondiscrimination clauses. If said labor union or representative fails or refuses to comply with said request that it furnish such a statement, the CONSTRUCTION MANAGER shall promptly notify the State Commissioner of Human Rights of said failure or refusal.

c. If directed to do so by the Commissioner of Human Rights, the CONSTRUCTION MANAGER will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses a. and b. and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.

d. The CONSTRUCTION MANAGER will state, in all solicitations or advertisements for employees placed by or on behalf of the CONSTRUCTION MANAGER, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability, or marital status.

e. The CONSTRUCTION MANAGER will comply with the provisions of Sections 290-299 of the Executive Law and with the Civil Rights Laws, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these nondiscrimination clauses and said sections of the Executive Law, and will permit access to the CONSTRUCTION MANAGER's books, records, and accounts by the State Commissioner of Human Rights, the Attorney General, and the Industrial Commissioner for the purpose of investigation to ascertain compliance with these nondiscrimination clauses and said sections of the Executive Law and Civil Rights Laws.

f. This Agreement may be forthwith canceled, terminated, or suspended in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the CONSTRUCTION MANAGER has not complied with these nondiscrimination clauses, and the CONSTRUCTION MANAGER may be declared ineligible for future Agreements made by or on behalf of the State or public authority or agency of the State, until the CONSTRUCTION MANAGER satisfies the State Commissioner of Human Rights that the CONSTRUCTION MANAGER has established and is carrying out a program in conformity with the provisions of these nondiscrimination clauses. Said finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these nondiscrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the CONSTRUCTION MANAGER, and an opportunity has been afforded the CONSTRUCTION MANAGER to be heard publicly in accordance with the Executive Law. Said sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

g. The CONSTRUCTION MANAGER will include the provisions of clauses a. through f. in every subcontract or purchase order in such a manner that said provisions will be binding upon each SUBCONSULTANT or vendor as to operations to be performed within the State of New York. The CONSTRUCTION MANAGER will take such action in enforcing said provisions of said subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSTRUCTION MANAGER becomes involved in or is threatened with litigation with a SUBCONSULTANT or vendor as a result of said direction by the State Commissioner of Human Rights or the contracting agency, the CONSTRUCTION MANAGER shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

### **3. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall read and shall be enforced as though so included.

### **4. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS**

The CONSTRUCTION MANAGER shall comply fully with all applicable laws, rules, and regulations.

### **5. AGREEMENT DEEMED EXECUTORY**

The CONSTRUCTION MANAGER agrees that this Agreement shall be deemed executory to the extent of moneys available and that no liability shall be incurred by the OWNER beyond the moneys available therefor.

### **6. OWNERSHIP OF DOCUMENTS**

Original drawings and specifications will become the property of the OWNER, and the CONSTRUCTION MANAGER may not use the drawings and specifications for any purpose not relating to the Project without the OWNER's consent. The CONSTRUCTION MANAGER may retain such reproductions of drawings and specifications as the CONSTRUCTION MANAGER may reasonably require. Upon completion of the Work or any early termination of this Agreement, the CONSTRUCTION MANAGER will promptly furnish the OWNER with the complete set of original record prints. All such original drawings and specifications shall become the property of the OWNER who may use them, without the CONSTRUCTION MANAGER's permission, for any proper purpose including, but not limited to, additions to or completion of the Project.

### **7. TERMINATION**

#### **Termination for Cause**

In the event that any provision of the Agreement is violated by the CONSTRUCTION MANAGER or by any SUBCONSULTANT, the OWNER may serve written notice upon the CONSTRUCTION MANAGER and upon the CONSTRUCTION MANAGER's surety of the OWNER's intention to terminate the Agreement; such notice shall contain the reasons for the intention to terminate the Agreement upon a date specified by the OWNER. If the violation or delay shall not cease or arrangements satisfactory to the OWNER shall not be made, the Agreement shall terminate upon the date so specified by the OWNER. In the event of any such termination, the OWNER may take over the Work and prosecute same to completion by Agreement or otherwise for the account and at the expense of the CONSTRUCTION MANAGER, and the CONSTRUCTION MANAGER and its surety, if any, shall be liable to the OWNER for all costs occasioned the OWNER thereby. In the event of such termination the OWNER may take possession of and may utilize such materials, appliances, and plant as may be on the Site and necessary or useful in completing the Work.

#### **Termination for Convenience**

The OWNER, at any time, may terminate this Agreement in whole or in part. Any such termination shall be effected by mailing or delivering to the CONSTRUCTION MANAGER a written notice of termination specifying the extent to which performance of Work under this Agreement is terminated and the date upon which said termination becomes effective. Upon receipt of the notice of termination, the CONSTRUCTION MANAGER shall act promptly to minimize the expenses resulting from said termination. The OWNER shall pay the CONSTRUCTION MANAGER the costs actually incurred by the CONSTRUCTION MANAGER including any fee earned up to the effective date of said termination, but in no event shall the CONSTRUCTION MANAGER be entitled to compensation in excess of the total consideration of this Agreement. In the event of said termination, the OWNER may take over the Work and prosecute same to completion by Agreement or otherwise and may take possession of and may utilize such materials, appliances, and plant as may be on the site and necessary or useful to complete the Work.

## **8. SUSPENSION OR ALTERATION**

- a. The OWNER may order the CONSTRUCTION MANAGER in writing to suspend, delay, or interrupt performance of all or any part or the Work for a reasonable period of time as the OWNER may determine. The order shall contain the reason or reasons for issuance which may include, but shall not be limited to, the following: latent field conditions, substantial program revisions, acquisition of rights-of-way or real property, financial crisis, labor disputes, civil unrest, or Acts of God.
- b. Upon receipt of a suspension order, the CONSTRUCTION MANAGER shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such Work from loss or damage.
- c. The CONSTRUCTION MANAGER specifically agrees that such suspension, interruption, or delay of the performance of the Work pursuant to this Item shall not increase the cost of performance of the Work of this Agreement.
- d. Time of Completion of the Work may be extended to such time as the OWNER determines shall compensate for the time lost by the suspension, interruption, or delay, such determination to be set forth in writing.

## **9. LAWS OF THE STATE OF NEW YORK**

This Agreement shall be governed by the Laws of the State of New York.

## **10. CODES**

Unless otherwise directed by the OWNER, the CONSTRUCTION MANAGER shall comply with all applicable codes and regulations required by law. Without limiting the generality of the foregoing, compliance with codes and regulations shall include, but shall not be limited to, those of the following which are applicable:

- a. Administrative Codes
- b. the Zoning Resolutions
- c. the State Building Code, NYS Uniform Fire Prevention and Building Code, latest edition
- d. Local Zoning Ordinances
- e. Local Building Codes
- f. the State Hospital Code

If Federal Aid is obtained for any facilities described herein, then any and all regulations imposed by the participating Federal Agency shall be complied with in the performance of this Agreement.

## **11. GOVERNMENT PROVISIONS**

The CONSTRUCTION MANAGER shall comply with any applicable provisions or Acts of Congress, rules, regulations, and requirements of the Government of the United States of America. If there is a grant of money or loan of money by the Government of the United States of America for the Project, then the CONSTRUCTION MANAGER shall furnish any information and provide any assistance which the OWNER deemed necessary for the preparation of any certificates, reports, or materials required as a result of obtaining said grant or loan.

## **12. COOPERATION**

The CONSTRUCTION MANAGER shall render any assistance which the OWNER may require with respect to any claim or action in any way relating to the CONSTRUCTION MANAGER's services during or subsequent to the design or construction of the Project including, without limitation, review of claims, preparation of technical reports

and participation in negotiations both before and after it has otherwise completed performance of the Agreement and without any additional compensation therefor.

### **13. LATE PAYMENT**

Timeliness of payment and any interest to be paid to the CONSTRUCTION MANAGER for late payment shall be governed by Section 2880 of the Public Authorities Law, to the extent required by law.

### **14. DEATH OF THE CONSTRUCTION MANAGER**

If the CONSTRUCTION MANAGER is an individual and that CONSTRUCTION MANAGER shall die prior to the said completed performance of this Agreement, then the payment to the estate of said CONSTRUCTION MANAGER, pursuant to this Agreement, shall be made as if the Project or any part thereof had been suspended or altered on the date of the death of the CONSTRUCTION MANAGER. If the CONSTRUCTION MANAGER is a partnership and a partner shall die prior to the completed performance of this Agreement, the OWNER, in the OWNER's discretion, may deem the Project or any part thereof, suspended or altered on the date of said death or any date thereafter which the OWNER selects, and the payment to the estate of the deceased CONSTRUCTION MANAGER or the partnership, pursuant to this Agreement, shall be made as if the Project or any part thereof had been suspended or altered on the date of said death or such other date thereafter selected by the OWNER. The OWNER shall have the right to the immediate possession of all files of the CONSTRUCTION MANAGER relating to the Project, all plans and specifications in regard to the Project, and shall have a right to retain the services of another CONSTRUCTION MANAGER to complete the Project. If the CONSTRUCTION MANAGER is a professional or other corporation, then this paragraph shall not be applicable.

### **15. OWNER-CONSTRUCTION MANAGER RELATIONSHIP**

The relationship created by this Agreement between the OWNER and CONSTRUCTION MANAGER is one of independent CONSTRUCTION MANAGER and it is in no way to be construed as creating any agency relationship between the OWNER and the CONSTRUCTION MANAGER nor is it to be construed as, in any way or under any circumstances, creating or appointing the CONSTRUCTION MANAGER as an agent of the OWNER for any purpose whatsoever.

### **16. PROTECTION OF LIVES AND HEALTH**

Each CONSTRUCTION MANAGER and SUBCONSULTANT shall comply fully with all applicable provisions of the laws of the State of New York, the United States of America, and with all applicable rules and regulations, adopted or promulgated, by agencies or municipalities of the State of New York or the United States of America. The CONSTRUCTION MANAGER's and SUBCONSULTANT's attention is specifically called to the applicable rules and regulations, codes, and bulletins of the New York State Department of Labor and to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended. The CONSTRUCTION MANAGER shall report on compliance to the OWNER or OWNER's Representative at the weekly safety meetings.

### **17. AFFIRMATIVE ACTION**

A. The CONSTRUCTION MANAGER agrees, in addition to any other nondiscrimination provision of the Agreement and at no additional cost to the Owner, to fully comply with and cooperate in the implementation of an Affirmative Action Plan designed to provide for equal employment opportunities for Minorities and Women, and a goal oriented Utilization Plan for Minority/Women Business Enterprise (M/WBE) participation in the performance of the Work, in such form and substance as herein stated. The CONSTRUCTION MANAGER further agrees to incorporate all Affirmative Action provisions of the Agreement in all subcontracts, regardless of tier.

B. The CONSTRUCTION MANAGER must submit to the Owner, and the prospective SUBCONSULTANT's must submit to the CONSTRUCTION MANAGER, an Affirmative Action Plan which demonstrates its best efforts

to provide for equal employment opportunities for Minorities and Women, and a goal oriented Utilization Plan for MBE/WBE participation in the performance of the Work, in such form and substance as may be required by the Owner. A meeting to review these submissions may be scheduled by the Owner.

C. These Affirmative Action provisions shall be deemed supplementary to, and not in lieu of the nondiscrimination provisions required by N.Y.S. Labor Law or other applicable Federal, State or local laws.

D. In Accordance with Article 15A of the Executive Law and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development, the CONSTRUCTION MANAGER agrees to be bound by the following clauses. In any circumstances of uncertainty or conflict, the Regulations of the Minority and Women's Business Development Division supersede this information.

**1. Utilization Plan; Waivers.**

a. The CONSTRUCTION MANAGER shall submit to the Owner a Utilization Plan on forms provided by the Owner within the time-frame stated in the Supplement To Information For Bidders. The Utilization Plan shall list all SUBCONSULTANTs and suppliers the CONSTRUCTION MANAGER intends to use on the Agreement and indicate which ones are M/WBEs. The Utilization Plan shall be prepared to achieve the participation goals indicated in the bid documents.

b. The Owner will review the Utilization Plan and will issue to the CONSTRUCTION MANAGER a written notice of acceptance or deficiency within twenty (20) days of its receipt. A notice of deficiency shall include (i) the name of any M/WBE which is not acceptable for the purpose of complying with the M/WBE participation goals and the reasons why it is not acceptable; (ii) elements of the Agreement scope of work which the Owner has determined can be reasonably structured by the CONSTRUCTION MANAGER to increase the likelihood of participation in the Agreement by M/WBEs; and (iii) other information which the Owner determines to be relevant to the Utilization Plan.

c. The CONSTRUCTION MANAGER shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Owner a written remedy in response to the notice of deficiency. If the written remedy which is submitted is not timely or is found by the Owner to be inadequate, the Owner shall notify the CONSTRUCTION MANAGER and direct the CONSTRUCTION MANAGER to submit, within five (5) business days, a request for a partial or total waiver of M/WBE participation goals on forms provided by the Owner. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid.

d. The CONSTRUCTION MANAGER who has made good faith efforts to obtain commitments from M/WBE SUBCONSULTANTs and suppliers prior to submitting its Utilization Plan may submit a request for waiver at the same time it submits its Utilization Plan. If a request for waiver is submitted with the Utilization Plan and is not accepted by the Owner at that time, the provisions of clauses (b) and (c), regarding the notice of deficiency and written remedy will apply. In this case, the CONSTRUCTION MANAGER may submit a second request for waiver as directed by the Owner.

e. If the CONSTRUCTION MANAGER does not submit a Utilization Plan, remedy deficiencies in a Utilization Plan, submit a request for waiver, or if the Owner determines that the Utilization Plan does not indicate that the M/WBE participation goals will be met and/or that the CONSTRUCTION MANAGER has failed to document good faith efforts, the Owner may disqualify the CONSTRUCTION MANAGER as being not responsible.

f. The CONSTRUCTION MANAGER shall attempt to utilize, in good faith, any MBE or WBE identified within its Utilization Plan, at least to the extent indicated in the Plan.

**2. Administration Hearing on Disqualification**

a. If the Owner disqualifies a bid for any of the reasons set forth in (1) (e) above, the CONSTRUCTION MANAGER shall be entitled to an administrative hearing, on the record, before a hearing officer appointed by the Owner to review the determination of disqualification of the bid and determination of non-responsibility of the CONSTRUCTION MANAGER.

b. The hearing officer's determination shall be the final determination of the Owner. Such final administrative determination shall be reviewable by a proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules, provided such proceeding is commenced within thirty (30) days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Section 313 of the Executive Law.

### 3. Good Faith Efforts

In order to show that it has made good faith efforts to comply with the M/WBE participation goals of this Agreement, the CONSTRUCTION MANAGER shall submit such documentation as will enable the Owner to make a determination in accordance with the criteria set forth in Section 313 of the Executive Law and the Rules and Regulations promulgated thereunder.

### 4. Compliance Reports

The CONSTRUCTION MANAGER shall submit, and shall require SUBCONSULTANT's to submit, compliance reports on forms and at intervals established by the Owner. Reports not submitted at such times as required by the Owner shall be cause for the Owner to delay implementing scheduled payments to the CONSTRUCTION MANAGER.

### 5. CONSTRUCTION MANAGER's Failure to Meet M/WBE Participation Goals

(a) If the CONSTRUCTION MANAGER, after making good faith efforts, is unable to comply with a Agreement's M/WBE participation goals, the CONSTRUCTION MANAGER may submit a request for a partial or total waiver on forms provided by the Owner documenting good faith efforts by the CONSTRUCTION MANAGER to meet such goals. If the documentation required with the request for waiver is complete, the Owner shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(b) If the Owner, upon review of the CONSTRUCTION MANAGER's Utilization Plan and compliance reports, determines that the CONSTRUCTION MANAGER is failing or refusing to comply with the Agreement's M/WBE participation goals, and no waiver has been issued in regards to such non-compliance, the Owner may issue a notice of deficiency to the CONSTRUCTION MANAGER. The CONSTRUCTION MANAGER must respond to the notice to deficiency within seven (7) days of receipt. Such response may include a request for partial or total waiver of M/WBE participation goals.

### 6. CONSTRUCTION MANAGER and Owner Complaints; Arbitration

(a) Subsequent to the award of this Agreement, if the CONSTRUCTION MANAGER submits a request for waiver of M/WBE participation goals and the Owner denies the request or fails to respond in any way within twenty (20) days of receiving it, or if the CONSTRUCTION MANAGER has received a written determination from the Owner that the CONSTRUCTION MANAGER is failing or refusing to comply with goals, the CONSTRUCTION MANAGER may file a complaint with the Director, Division of Minority and Women's Development in the Department of Economic Development ("Director"), according to the provisions of Section 316 of the Executive Law. The complaint must be filed within twenty (20) days of the Owner's receipt of the request for waiver, if the Owner has not responded in that time, or within twenty (20) days of a notification that the request has been denied by the Owner or within twenty (20) days of receipt of notification from the Owner that the CONSTRUCTION MANAGER is failing or refusing to comply with goals.

(b) If the CONSTRUCTION MANAGER fails or refuses to comply with goals for participation by M/WBEs as established by this Agreement, the Owner may file a complaint with the Director pursuant to Section 316 of the Executive Law.

(c) A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.

(d) The party filing a complaint, whether the CONSTRUCTION MANAGER or the Owner, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.

(e) Upon receipt of a complaint the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within thirty (30) days of receipt of the complaint the Director is unable to resolve the complaint to the satisfaction of the Owner and the CONSTRUCTION MANAGER, the complaint shall be referred to the American Arbitration Association for resolution pursuant to Section 316 of the Executive Law and the applicable requirements of Article 75 of the Civil Practice Law and Rules.

(f) Upon conclusion of the arbitration proceeding, the arbitrator will submit to the Director his or her award regarding the alleged violation of the Agreement or refusal of the Owner to grant a waiver request by the CONSTRUCTION MANAGER. The award of the arbitrator with respect to the alleged violation of the Agreement or the refusal of the Owner to grant a waiver shall be final and may be vacated or modified only as provided by Article 75 of the Civil Practice Law and Rules.

(g) Upon conclusion of the arbitration proceedings and the rendition of an award, the arbitrator will also recommend to the Director a remedy including, if appropriate, the imposition of sanctions, fines or penalties. The Director will either (i) adopt the recommendation of the arbitrator; (ii) determine that no sanctions, fines or penalties should be imposed; or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty.

(h) The Director, within ten (10) days of receipt of the arbitrator's award and recommendations, will issue a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail, return receipt requested. The determination of the Director as to the imposition of fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.

(i) The determination of the Owner or the CONSTRUCTION MANAGER to proceed with a complaint shall not preclude the Owner, in its discretion, from pursuing any other remedies which it may have pursuant to law and Agreement.

## 7. Subcontracts

The CONSTRUCTION MANAGER will include the provisions of paragraphs three (3.) and six (6.) above in every subcontract, in such manner that such provisions will be binding upon the SUBCONSULTANT as to work in connection with this Agreement.

E. The following forms are to be used in submitting Affirmative Action Plans and are hereby made a part of the Agreement:

1. CONSTRUCTION MANAGER's Utilization Plan, Minority & Female (EEO-1)
2. CONSTRUCTION MANAGER's Utilization Plan (EEO-6)
3. Bid-Contract Activity Summary (EEO-6b)
4. Six-Month Utilization Workforce Projection Schedule (EEO-7)
5. CONSTRUCTION MANAGER's Permanent Employee Distribution (EEO-8)

6. Compliance Report (SC11A)
7. Request for Waiver (Waiver)

#### **18. N.Y.S. UNIFORM CONTRACTING QUESTIONNAIRE**

A. In order to assist the OWNER in determining the responsibility and reliability of the vendor selected for the Agreement and to effectuate the directives of Executive Order No. 125, the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among Contracting Agencies.

B. When directed by the OWNER, prior to the award of any Agreement valued at \$10,000 or more, the selected vendor shall, within ten (10) days following either oral or written notice that it must comply, submit, in the form provided by the OWNER, a duly executed Uniform Contracting Questionnaire to the OWNER at the following address:

Dormitory Authority -- State of New York  
 Uniform Contracting Questionnaire Responsibility Information Officer  
 161 Delaware Avenue  
 Delmar, New York 12054-1398

C. The information contained in the Uniform Contracting Questionnaire will serve as an informational resource to aid the OWNER in making an award determination.

D. Duly executed Uniform Contracting Questionnaires submitted to the OWNER or any other Contracting Agency shall be effective for a period of one year from their execution provided that the facts attested therein have remained unchanged.

E. The CONSTRUCTION MANAGER may submit a copy of a previously executed Uniform Contracting Questionnaire if it is submitted within one year of its Date of Execution and provided that it is accompanied by a duly executed Affidavit of No Change on the form supplied by the OWNER.

#### **19. PROHIBITED INTERESTS**

A. Officers and employees of the Owner are bound by Sections 73, 73-a and 74 of the Public Officers Law. In addition, no officer, employee, architect, attorney, engineer, inspector or consultant of or for the Owner authorized on behalf of the Owner to exercise any legislative, executive, administrative, supervisory or other similar functions in connection with the Agreement or the Work, shall become personally interested, directly or indirectly, in the Agreement, material supply contract, subcontract, insurance Agreement, or any other Agreement pertaining to the Work.

B. Employees of the Owner are bound by Sections 73 (5) and 74 of the New York State Public Officers Law and New York State Ethics Commission Advisory Opinion No. 94-16 with respect to the solicitation, acceptance or receipt of gifts, gratuities, stipends or other things of value from entities having a direct or indirect business interest with the Owner. Employees are prohibited from soliciting, accepting or receiving from the Consultant anything with a value of \$75 or more, or anything, regardless of value, that would constitute a substantial conflict with the proper discharge of the employee's duties in the public interest. The Consultant agrees that its directors, officers and employees will abide by the aforementioned provisions in their dealings with employees of the Owner. Consultant further agrees that it shall report to the Inspector General of the Owner any attempt by an employee of the Owner to solicit any gift, gratuity, stipend or thing of value. Any violation of these provisions shall justify termination of this Agreement and may result in the rejection of the Consultant's bid for future Agreements. Any violation may also result in the rejection of bids for future Agreements from any firm in which an individual who violates this Section has an interest.

**20. INVALID PROVISIONS**

If any term or provision of the Contract Documents or the application thereof to any person, firm or corporation, or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of the Contract Documents, or the application of such terms or provisions to persons, firms or corporations, or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Contract Documents shall be valid and be enforced to the fullest extent permitted by law.

**21. CONFLICTING TERMS**

In the event of a conflict between or among any parts of the Agreement, including Appendices thereto, the better quality, greater quantity, or more costly part shall govern, unless the OWNER directs otherwise.

**22. NONCOMPLIANCE**

This Agreement may be void and of no effect unless the CONSTRUCTION MANAGER complies with each of the provisions of these **ADDITIONAL ITEMS**.

## GENERAL INSURANCE REQUIREMENTS

ACCIDENT CERTIFICATE OF INSURANCE		DATE (MM/DD/YY)
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PRODUCER  Local Agent		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.										
COMPANIES AFFORDING COVERAGE												
INSURED  Your Name		<table border="1"> <tr><td>COMPANY A</td><td>Your Insurance Company</td></tr> <tr><td>COMPANY B</td><td>Your Insurance Company</td></tr> <tr><td>COMPANY C</td><td>Your Insurance Company</td></tr> <tr><td>COMPANY D</td><td>Your Insurance Company</td></tr> <tr><td>COMPANY E</td><td>Your Insurance Company</td></tr> </table>	COMPANY A	Your Insurance Company	COMPANY B	Your Insurance Company	COMPANY C	Your Insurance Company	COMPANY D	Your Insurance Company	COMPANY E	Your Insurance Company
COMPANY A	Your Insurance Company											
COMPANY B	Your Insurance Company											
COMPANY C	Your Insurance Company											
COMPANY D	Your Insurance Company											
COMPANY E	Your Insurance Company											

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS												
A	GENERAL LIABILITY  X COMMERCIAL GENERAL LIABILITY  <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  <input type="checkbox"/> OWNER'S & CONT PROT  X Include Independent Contractors  X XCU Coverage	XYZ - 123	04/01/XX	04/01/XY	<table border="1"> <tr><td>GENERAL AGGREGATE</td><td>\$1,000,000</td></tr> <tr><td>PRODUCTS-COMP/OP AGG</td><td>\$1,000,000</td></tr> <tr><td>PERSONAL &amp; ADV INJURY</td><td>\$1,000,000</td></tr> <tr><td>EACH OCCURRENCE</td><td>\$1,000,000</td></tr> <tr><td>FIRE DAMAGE (Any one fire)</td><td>\$ 50,000</td></tr> <tr><td>MED EXP (Any one person)</td><td>\$ 5,000</td></tr> </table>	GENERAL AGGREGATE	\$1,000,000	PRODUCTS-COMP/OP AGG	\$1,000,000	PERSONAL & ADV INJURY	\$1,000,000	EACH OCCURRENCE	\$1,000,000	FIRE DAMAGE (Any one fire)	\$ 50,000	MED EXP (Any one person)	\$ 5,000
GENERAL AGGREGATE	\$1,000,000																
PRODUCTS-COMP/OP AGG	\$1,000,000																
PERSONAL & ADV INJURY	\$1,000,000																
EACH OCCURRENCE	\$1,000,000																
FIRE DAMAGE (Any one fire)	\$ 50,000																
MED EXP (Any one person)	\$ 5,000																
B	AUTOMOBILE LIABILITY  X ANY AUTO X ALL OWNED AUTOS X SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS X GARAGE LIABILITY	ABC-345	04/01/XX	04/01/XY	<table border="1"> <tr><td>COMBINED SINGLE LIMIT</td><td>\$1,000,000</td></tr> <tr><td>BODILY INJURY (Per Person)</td><td>\$1,000,000</td></tr> <tr><td>BODILY INJURY (Per accident)</td><td>\$1,000,000</td></tr> <tr><td>PROPERTY DAMAGE</td><td>\$1,000,000</td></tr> </table>	COMBINED SINGLE LIMIT	\$1,000,000	BODILY INJURY (Per Person)	\$1,000,000	BODILY INJURY (Per accident)	\$1,000,000	PROPERTY DAMAGE	\$1,000,000				
COMBINED SINGLE LIMIT	\$1,000,000																
BODILY INJURY (Per Person)	\$1,000,000																
BODILY INJURY (Per accident)	\$1,000,000																
PROPERTY DAMAGE	\$1,000,000																
C	EXCESS LIABILITY  X UMBRELLA FORM  <input type="checkbox"/> OTHER THAN UMBRELLA FORM	LLL-656	04/01/XX	04/01/XY	<table border="1"> <tr><td>EACH OCCURRENCE</td><td>\$4,000,000</td></tr> <tr><td>AGGREGATE</td><td>\$4,000,000</td></tr> <tr><td></td><td>\$</td></tr> </table>	EACH OCCURRENCE	\$4,000,000	AGGREGATE	\$4,000,000		\$						
EACH OCCURRENCE	\$4,000,000																
AGGREGATE	\$4,000,000																
	\$																
D	WORKERS COMPENSATION  AND EMPLOYERS' LIABILITY	WCP-678	04/01/XX	04/01/XY	<table border="1"> <tr><td><input type="checkbox"/> STATUTORY LIMITS</td><td></td></tr> <tr><td>EACH ACCIDENT</td><td>\$ 100,000</td></tr> <tr><td>DISEASE - POLICY LIMIT</td><td>\$ 100,000</td></tr> <tr><td>DISEASE - EACH EMPLOYEE</td><td>\$ 100,000</td></tr> </table>	<input type="checkbox"/> STATUTORY LIMITS		EACH ACCIDENT	\$ 100,000	DISEASE - POLICY LIMIT	\$ 100,000	DISEASE - EACH EMPLOYEE	\$ 100,000				
<input type="checkbox"/> STATUTORY LIMITS																	
EACH ACCIDENT	\$ 100,000																
DISEASE - POLICY LIMIT	\$ 100,000																
DISEASE - EACH EMPLOYEE	\$ 100,000																
E	OTHER  NY5 Disability Benefits	DBL-810	04/01/XX	04/01/XY	STATUTORY												
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS Waiver of Subrogation for Workers Comp. & General Liability DASNY CONTRACT NO. _____ FACILITY: _____ PROJECT NAME: _____ The following are Additional Insureds as respects this Project:																	

Dormitory Authority-State of New York 161 Delaware Avenue Delmar, NY 12054 Attn: Risk Management Unit	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY XXXXXXXXXXXXXXXXXXXXXXX MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT XXXXXXXXXXXXXXXXXXXXXXX AUTHORIZED REPRESENTATIVE Your Representative
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**DORMITORY AUTHORITY - STATE OF NEW YORK**  
 Office For Affirmative Action  
 One Penn Plaza, 48th Floor  
 New York, New York 10119-0118

**CONSULTANT IDENTIFICATION**

Firm \_\_\_\_\_  
 Address \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State Zip \_\_\_\_\_  
 Contact Person \_\_\_\_\_ Telephone \_\_\_\_\_

**PROJECT INFORMATION**

Project _____	Contract Amount \$ _____
Address _____	Contract Number _____
Address _____	Project Term _____ Mo. _____
Address _____	Authority Goal: MBE _____ (%)
	Authority Goal: WBE _____ (%)

Work Description \_\_\_\_\_

**1. List previous Dormitory Authority Work performed by your Firm:**

Project _____	Contract Amount \$ _____
MBE Utilization: \$ _____	WBE Utilization: \$ _____
Project _____	Contract Amount \$ _____
MBE Utilization: \$ _____	WBE Utilization: \$ _____
Project _____	Contract Amount \$ _____
MBE Utilization: \$ _____	WBE Utilization: \$ _____

**2. Do you intend to engage other consultants or acquire other services in connection with the Work of this Contract?**  
 No    Yes   If YES, provide the information below:

**TYPE OF CONSULTANT OR SERVICE**

**ESTIMATED AMOUNT**  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_

**3. Do you intend to acquire any supplies, materials, furniture, equipment or similar items in connection with the Work of this Contract?    No    Yes   If YES, provide the information below:**

**TYPE OF SUPPLIES, MATERIALS, ETC.**

**ESTIMATED AMOUNT**  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_

## CONSULTANT'S UTILIZATION PLAN

4. **Several Minority- and Women-Owned Businesses, MBE and WBE, utilized by your Firm during the past three years**

π Name \_\_\_\_\_  
ddr \_\_\_\_\_  
ddr \_\_\_\_\_

Service/Product Provided: Award \$

MBE       WBE

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Address \_\_\_\_\_

Service/Product Provided: Award \$

MBE       WBE

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Address \_\_\_\_\_

Service/Product Provided: Award \$

MBE       WBE

π Name \_\_\_\_\_  
-ddr \_\_\_\_\_  
-ddr \_\_\_\_\_

Service/Product Provided: Award \$

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EMBE EMBE

5. Complete the Minority- and Women-Owned Business Goal Tabulation Schedule below for your Firm using either dollar amounts or a percentage of your Contract.

AWARD CATEGORY	MBE GOAL	WBE GOAL	DOLLARS or PERCENT
Consultants and Services	_____	_____	<input type="checkbox"/> (\$) <input type="checkbox"/> (%)
Supplies, Materials, etc.	_____	_____	<input type="checkbox"/> (\$) <input type="checkbox"/> (%)
Total Goal	_____	_____	<input type="checkbox"/> (\$) <input type="checkbox"/> (%)

Space below is provided for comments that your Firm may have regarding the utilization of Minority- and/or Women-Owned Businesses in the Work of your Contract.

**Principal or Officer:**

**2: Name of Principal or Officer**

**Type Title of Principal or Officer**

Name of Principal or Officer

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Date

**Answer below the line above**

Senior Director, Office For Affirmative Action  
Dormitory Authority - State of New York

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Date

CONSULTANT'S BID-CONTRACT ACTIVITY SUMMARY WITH  
MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

DORMITORY AUTHORITY - STATE OF NEW YORK  
Office For Affirmative Action  
One Penn Plaza, 48th Floor  
New York, New York 10119-0118

## CONSULTANT IDENTIFICATION

Firm \_\_\_\_\_ Fed ID No. \_\_\_\_\_  
Address \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State Zip \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone \_\_\_\_\_

## PROJECT INFORMATION

Project \_\_\_\_\_ Contract Amount \$ \_\_\_\_\_  
Contract Number \_\_\_\_\_  
Work Description \_\_\_\_\_ MBE Goal Status:  Over  Under  
Consultant's Goals: MBE \$ \_\_\_\_\_ WBE \$ \_\_\_\_\_ WBE Goal Status:  Over  Under

## MINORITY- AND WOMEN-OWNED BUSINESS BID AND CONTRACT ACTIVITY SUMMARY

Firm Name \_\_\_\_\_ Value of Proposal/Bid Received or Award \$ \_\_\_\_\_  
Addr \_\_\_\_\_ Date of Award, Pending or Eliminated Action \_\_\_\_\_  
Addr \_\_\_\_\_ Contract Status:  Awarded  Pending  Eliminated  
Work Description: \_\_\_\_\_ Type of Firm:  MBE  WBE

Firm Name \_\_\_\_\_ Value of Proposal/Bid Received or Award \$ \_\_\_\_\_  
Addr \_\_\_\_\_ Date of Award, Pending or Eliminated Action \_\_\_\_\_  
Addr \_\_\_\_\_ Contract Status:  Awarded  Pending  Eliminated  
Work Description: \_\_\_\_\_ Type of Firm:  MBE  WBE

Firm Name \_\_\_\_\_ Value of Proposal/Bid Received or Award \$ \_\_\_\_\_  
Addr \_\_\_\_\_ Date of Award, Pending or Eliminated Action \_\_\_\_\_  
Addr \_\_\_\_\_ Contract Status:  Awarded  Pending  Eliminated  
Work Description: \_\_\_\_\_ Type of Firm:  MBE  WBE

Firm Name \_\_\_\_\_ Value of Proposal/Bid Received or Award \$ \_\_\_\_\_  
Addr \_\_\_\_\_ Date of Award, Pending or Eliminated Action \_\_\_\_\_  
Addr \_\_\_\_\_ Contract Status:  Awarded  Pending  Eliminated  
Work Description: \_\_\_\_\_ Type of Firm:  MBE  WBE

Firm Name \_\_\_\_\_ Value of Proposal/Bid Received or Award \$ \_\_\_\_\_  
Addr \_\_\_\_\_ Date of Award, Pending or Eliminated Action \_\_\_\_\_  
Addr \_\_\_\_\_ Contract Status:  Awarded  Pending  Eliminated  
Work Description: \_\_\_\_\_ Type of Firm:  MBE  WBE

Type Name of Principal or Officer \_\_\_\_\_

Type Title of Principal or Officer \_\_\_\_\_

Signature of Principal or Officer \_\_\_\_\_

Date \_\_\_\_\_

## CONSULTANT'S PERMANENT EMPLOYEE DISTRIBUTION

**DORMITORY AUTHORITY - STATE OF NEW YORK**  
 Office For Affirmative Action  
 One Penn Plaza, 48th Floor  
 New York, New York 10119-0118

## CONSULTANT IDENTIFICATION

Firm	_____	Fed ID No.	_____
Address	_____	_____	
Address	_____	_____	
City	_____	_____	
Contact Person	_____	State Zip	_____
		Telephone	_____

## PROJECT INFORMATION

Project	_____	Contract Amount	\$ _____
	_____	Contract Number	_____

## DISTRIBUTION OF PERMANENT EMPLOYEES

ENTER POSITION OR JOB TITLE	FEMALE EMPLOYEES				MALE EMPLOYEES			
	NATIVE				NATIVE			
	WHITE	BLACK	AMERICAN	HISPANIC	WHITE	BLACK	AMERICAN	HISPANIC
				ASIAN				ASIAN

EXECUTIVE AND OWNER: For position titles such as President, Partner, Owner, Treasurer, Secretary, etc.

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PROFESSIONAL: For position titles of individuals possessing a License to practice their profession

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TECHNICAL AND MANAGEMENT: For position titles except Executive and Owner, Professional, and Clerical and Support

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CLERICAL AND SUPPORT

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Type Name of Principal or Officer

Type Title of Principal or Officer

Signature of Principal or Officer

Date

## CONSULTANT'S COMPLIANCE REPORT

**DORMITORY AUTHORITY - STATE OF NEW YORK**  
 Office For Affirmative Action  
 One Penn Plaza, 48th Floor  
 New York, New York 10119-0118

Page 1 of \_\_\_\_\_  
 Year \_\_\_\_\_

## CONSULTANT IDENTIFICATION

Firm \_\_\_\_\_ Fed ID No. \_\_\_\_\_  
 Address \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State Zip \_\_\_\_\_  
 Contact Person \_\_\_\_\_ Telephone \_\_\_\_\_

## PROJECT INFORMATION

Project \_\_\_\_\_ Contract Amount \$ \_\_\_\_\_  
 Work Description \_\_\_\_\_ Contract Number \_\_\_\_\_  
 Completion Percent:  25%  50%  75%  100% Estimated \_\_\_\_\_  
 Completion Date \_\_\_\_\_

## MINORITY- AND WOMEN- OWNED BUSINESS CONTRACT STATUS SUMMARY

Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No:	Payments To Date	\$ _____
Addr _____	Telephone:	Start Date (Est)	_____
Work Description: _____		End Date (Est)	_____
Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No:	Payments To Date	\$ _____
Addr _____	Telephone:	Start Date (Est)	_____
Work Description: _____		End Date (Est)	_____
Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No:	Payments To Date	\$ _____
Addr _____	Telephone:	Start Date (Est)	_____
Work Description: _____		End Date (Est)	_____
Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No:	Payments To Date	\$ _____
Addr _____	Telephone:	Start Date (Est)	_____
Work Description: _____		End Date (Est)	_____
Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No:	Payments To Date	\$ _____
Addr _____	Telephone:	Start Date (Est)	_____
Work Description: _____		End Date (Est)	_____

Type Name of Principal or Officer \_\_\_\_\_

Type Title of Principal or Officer \_\_\_\_\_

Signature of Principal or Officer \_\_\_\_\_

Date \_\_\_\_\_

**CONSULTANT'S COMPLIANCE REPORT  
CONTINUATION SHEET**

**CONSULTANT** \_\_\_\_\_ Page No. \_\_\_\_\_ of \_\_\_\_\_  
**PROJECT NUMBER** \_\_\_\_\_ Quarter Number \_\_\_\_\_  
 Year \_\_\_\_\_

**MBE - WBE - OWNED-BUSINESS QUARTERLY CONTRACT STATUS SUMMARY - CONTINUED**

Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No: _____		Payments To Date
Addr _____	Telephone: _____		Start Date (Est)
Work Description: _____			End Date (Est)
Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No: _____		Payments To Date
Addr _____	Telephone: _____		Start Date (Est)
Work Description: _____			End Date (Est)
Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No: _____		Payments To Date
Addr _____	Telephone: _____		Start Date (Est)
Work Description: _____			End Date (Est)
Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No: _____		Payments To Date
Addr _____	Telephone: _____		Start Date (Est)
Work Description: _____			End Date (Est)
Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No: _____		Payments To Date
Addr _____	Telephone: _____		Start Date (Est)
Work Description: _____			End Date (Est)
Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No: _____		Payments To Date
Addr _____	Telephone: _____		Start Date (Est)
Work Description: _____			End Date (Est)
Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No: _____		Payments To Date
Addr _____	Telephone: _____		Start Date (Est)
Work Description: _____			End Date (Est)
Firm Name _____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	Contract Value	\$ _____
Addr _____	Fed ID No: _____		Payments To Date
Addr _____	Telephone: _____		Start Date (Est)
Work Description: _____			End Date (Est)

## CONSULTANT'S REQUEST FOR WAIVER

## DORMITORY AUTHORITY - STATE OF NEW YORK

Office For Affirmative Action

One Penn Plaza, 48th Floor

New York, New York 10119-0118

A. TYPE OF WAIVER REQUEST:  Total  Partial. If Partial, complete blanks below:

MBE Waiver (%) Requested \_\_\_\_\_

WBE Waiver (%) Requested \_\_\_\_\_

## B. CONSULTANT

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

Contact Person \_\_\_\_\_

State Zip \_\_\_\_\_

Telephone \_\_\_\_\_

## C. PROJECT

Project \_\_\_\_\_

Contract Amount \$ \_\_\_\_\_

Address \_\_\_\_\_

Contract Number \_\_\_\_\_

Address \_\_\_\_\_

Project Term Mo. \_\_\_\_\_

Address \_\_\_\_\_

Authority Goal: MBE (%) \_\_\_\_\_

Work Description \_\_\_\_\_

Authority Goal: WBE (%) \_\_\_\_\_

## D. REQUIRED WAIVER INFORMATION DOCUMENTATION

If the form does not provide adequate space for a complete response to any item, attach additional pages as required to provide complete information requested. If any information request item is not applicable to your Company, insert "n/a" on the first information request line. Whenever a request is made for a particular document in an applicable information request and the requested document is not attached, the Request For Waiver will be deemed non-responsive, incomplete and will be rejected.

1. Complete the following for certified minority- and women-owned business enterprises that were solicited in writing to provide services on the Project identified above for purposes of complying with the Authority's goal requirements. Attach a copy of each solicitation response received from any minority-owned business, MBE, and any woman-owned business, WBE.

Firm Name \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_ Trade \_\_\_\_\_  
 City, State \_\_\_\_\_ Check certified firm type:  
 Contact \_\_\_\_\_  MBE  WBE

Firm Name \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_ Trade \_\_\_\_\_  
 City, State \_\_\_\_\_ Check certified firm type:  
 Contact \_\_\_\_\_  MBE  WBE

Firm Name \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_ Trade \_\_\_\_\_  
 City, State \_\_\_\_\_ Check certified firm type:  
 Contact \_\_\_\_\_  MBE  WBE

**Firm Name** \_\_\_\_\_

**Address** \_\_\_\_\_

**City, State** \_\_\_\_\_

Contact \_\_\_\_\_

Date \_\_\_\_\_

Trade \_\_\_\_\_

**Check certified firm type:**

MBE       WBE

Firm Name \_\_\_\_\_

Address \_\_\_\_\_

City, State \_\_\_\_\_

Contact \_\_\_\_\_

Date \_\_\_\_\_

Trade

**Check certified firm type:**

MBE       WBE

2. Provide a description of any solicitation documents, contract documents, plans, specifications and/or other documentation available to certified minority- and women-owned businesses for the purposes of soliciting their services or bids, and the manner in which these documents were made available.

3. Attach documentation of any negotiations with any minority- and women-owned business enterprises undertaken for purposes of complying with the Authority's goal requirements.

Attachment(s) provided       Not Applicable

4. Provide a statement of justification to support the request for a waiver of the goal requirements established by the Authority.